

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of Wisconsin Bell, Inc., for a Section 271 Checklist
Proceeding

6720-TI-170

DECISION

Phase I

This is the Commission's decision in Phase 1 of this docket concerning the Petition of Wisconsin Bell, Inc. (d/b/a SBC Wisconsin, formerly Ameritech Wisconsin)¹ for Section 271 checklist approval.² Phase I of this docket consists of identifying issues and contested facts and law in areas not related to SBC Wisconsin's provision of Operational Support Systems ("OSS") and pricing of Unbundled Network Elements ("UNE"). According to 47 U.S.C. § 271(d)(2)(B), before making its determination, the Federal Communications Commission ("FCC") shall consult with the applicable state commission to verify compliance of the Bell operating company, i.e. SBC Wisconsin, with the requirements of subsection (c), commonly known as "Track A" and the "Competitive Checklist." This decision together with a subsequent decision in Phase II will provide the FCC with such consultation. It sets forth the factual basis and legal conclusions upon which a determination is made of compliance or non-compliance with the

¹ In this Decision, references to SBC Wisconsin may be used interchangeably with Ameritech, SBC, or Ameritech Wisconsin.

² Although this is referred to as a "decision," this is a public determination of the Commission's position to be filed in the Section 271 application of SBC Wisconsin before the FCC. This is not a proceeding in which a substantial interest of any party will be determined or adversely affected by a decision or order.

competitive checklist, Track A and the public interest standard on Phase I related issues. Where the Commission determines non-compliance and raises public interest concerns with the application, the Commission directs SBC Wisconsin to file a compliance plan.

Structure of the Decision

The Findings of Fact and Conclusions of Law in this decision are set forth in separate sections. Within each section, there is a separate subsection for Track A, each of the 14 competitive checklist items, and the public interest standard. The Opinion section, which contains information supporting and leading to the Findings of Fact and Conclusions of Law, is also subdivided by Track A, each competitive checklist item, and the public interest standard. These subsections within the Opinion section are further divided into five sub-subsections: (1) the statutory requirement; (2) a review of prior FCC decisions on this checklist item; (3) a list of the disputed items identified previously by the parties; (4) summaries of the positions of the parties; and (5) the Commission's recommendations. The Determination section of this decision directs SBC Wisconsin, in order to proceed with its § 271 application, to file a compliance plan on those issues with which the Commission finds SBC Wisconsin to be in noncompliance, specifically on line splitting/line sharing, dark fiber, switching, and unbundled network elements (UNE) combinations. The participants in this proceeding are listed in Appendix A. A list of Acronyms and case Citations is attached as Appendix B. A table of contents is also attached to this order as Appendix C.

INTRODUCTION

On September 14, 2001, the Commission opened this docket when it issued its "Notice of Proceeding and Investigation and Assessment of Costs." Pursuant to this notice SBC Wisconsin

filed on March 19, 2002, for the Commission's consideration, a proposed request to the FCC for authority to engage in "in-region, interLATA toll service" pursuant to 47 U.S.C. § 271. This proposed request included supporting affidavits.

On May 3, 2002, the Commission issued a "Notice of Proceeding and Investigation and Assessment of Costs and Technical Hearing" which established a hearing date and filing schedule for comments and reply affidavits from interested parties. Pursuant to this Notice, on May 14, 2002, a technical hearing was held at which parties were provided an opportunity to suggest a process for this proceeding. David Whitcomb, Administrative Law Judge ("ALJ"), presided and reported the parties' positions to the Commission. In response to a motion filed by the Citizens' Utility Board ("CUB") and other parties, the Commission issued an Order on June 7, 2002, revising its filing schedule for reply comments and affidavits from interested parties. Accordingly, parties filed comments and affidavits on July 2, 2002.

On July 1, 2002, the Commission issued an Order setting forth the process to be followed in Phase 1 of this proceeding. Pursuant to this Order, the following activities occurred:

- In the months of July and August, the parties, including SBC Wisconsin, prepared an issues matrix setting forth their respective positions on each and every factual and related legal issue relating to SBC's application.
- SBC Wisconsin retained under contract (at the Commission's direction) the services of John Kern of Kern and Associates, Inc., to facilitate resolution of the disputes.
- John Kern and Commission staff convened parties in a set of further prehearing conferences (Collaboratives) on August 13, 14, 27, and 28, 2002, to narrow the issues.
- Monthly progress reports were filed with Commission on August 8 and September 5, 2002.
- Staff filed its report as directed by the Commission by October 1, 2002.

On November 4, 2002, the Commission issued an order which sets forth the events subsequent to the issuance of staff's report.

At the Commission's Open Meeting of October 22, 2002, the Commission directed staff to draft findings on Phase 1 issues with supporting rationale based on the current record, along with any additional information staff requests from the parties, including legal arguments and/or factual statements. The Commission also directed staff to thereafter prepare, under the supervision of the Administrative Law Judge ("ALJ"), a proposed order on Phase 1 issues to be circulated to the parties for comment.

On October 25, 2002, staff requested that parties in this docket submit comments organized by topic and subtopic as shown on Disputed Issues Summary; Appendix G to the Staff Report dated October 1, 2002. Staff set November 15, 2002, as the due date for submission of initial comments and December 2, 2002, as the due date for reply comments. Staff also asked that within ten days of the date the letter, that the parties identify additional facts that they have to offer in support of their positions.

On October 30, 2002, AT&T Communications of Wisconsin, L.P. (AT&T) and TCG Milwaukee, Citizens' Utility Board (CUB), McLeod Telecommunications Services, Inc., (McLeod) TDS Metrocom, Inc., (TDS) Time Warner Telecom (TWC) and WorldCom Inc. (WCM) (aka "Joint Interveners") moved the Commission to clarify and adjust the schedule set forth in the October 25, 2002, Request for Comments on numerous grounds. The Joint Interveners argue that the schedule is unreasonable given their limited resources and other matters that the Joint Interveners have pending in other jurisdictions.

At its Open Meeting of October 31, 2002, the Commission took up the Joint Interveners' motion and decided to grant their motion to extend the schedule. Parties identified what additional facts they have to offer in support of their positions and why it is critical to include

these facts in the record as detailed in staff's October 25, 2002, Request for Comments, by November 15, 2002. The parties submitted initial comments, proposed findings of fact and conclusions of law as detailed in staff's October 25, 2002, Request for Comments, by December 5, 2002. Reply comments were due by December 16, 2002.

Staff was directed to prepare a draft proposed order addressing Phase One issues by January 15, 2003, and to provide parties the opportunity to comment on the draft proposed order within ten days of the mailing date of the draft proposed order.

Applicant SBC and other interested parties filed additional information pursuant to the above schedule. Also as ordered by the Commission, the staff prepared a draft proposed decision addressing Phase 1 issues by January 15, 2003, and circulated it to the parties for comment. The Commission received and considered those comments in its decision to issue this decision.

FINDING OF FACT

Track A

1. SBC Wisconsin has elected to proceed under Track A.
2. SBC Wisconsin has provided two estimates of CLEC facilities-based lines in SBC Wisconsin territory as of December of 2001. SBC Wisconsin estimates the number of CLEC lines in its territory as being between approximately 284,000 and 351,000.
3. The parties dispute the number of CLEC lines in SBC Wisconsin territory.
4. CLECs have confirmed that they are providing commercial local exchange service to business and residential customers in Wisconsin.

5. Facilities-based competition exists in Wisconsin with at least two or more competing companies offering residential and business facilities based service.

6. CLECs, including TDS Metrocom, AT&T, KMC, and Choice One, have interconnection agreements with SBC Wisconsin and provide service to residential and business customers.

7. AT&T has stated that two CLECs can be considered viable Track A competitors.

Checklist Item 1 – Interconnection [47 U.S.C. § 271(c)(2)(B)(i)]

8. SBC Wisconsin provides interconnection with its network by collocation and meet point arrangements. The means of interconnection it offers are fiber meet; physical collocation; virtual collocation and leasing of SBC Wisconsin facilities

9. The interconnection offered by SBC Wisconsin is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection.

10. SBC Wisconsin has a series of performance measures to monitor its interconnection and collocation performance.

11. SBC Wisconsin's current procedures for migration from meet span to collocation arrangements are not sufficiently timely for CLEC needs.

12. SBC has a legally binding obligation (e.g. Ameritech/AT&T Interconnection Agreement) for direct trunking to an end office or another carrier when a CLEC's traffic reaches a predetermined level at the tandem. In addition, the FCC has approved other 271 applications with similar requirements.

13. The parties identified no other legal obligations for SBC Wisconsin to negotiate interconnection agreements for purposes of 271 approval beyond those in §§ 271 and 252. Further, no party asserted that it failed to obtain an interconnection agreement due to bad faith negotiations.

14. As a threshold issue, some CLECs (e.g., TDS) have legally binding obligations, as part of their interconnection contracts, prohibiting direct access to the main distribution frame (MDF). In addition, the TDS contract contains the option for a Point of Termination bay (POT bay), an alternative solution proposed by AT&T. If these contractual provisions are insufficient, parties can negotiate other alternative approaches for accessing the MDF or seek arbitration before the Commission.

Checklist Item 2 – Unbundled Network Elements [47 U.S.C. § 271(c)(2)(B)(ii)]

15. In Docket 6720-TI-120, the Commission examined the extent to which SBC Wisconsin (then Ameritech Wisconsin) provided nondiscriminatory access to network elements as required in federal statutes. In the final order in that docket, dated May 30, 1997, the Commission identified areas in which Ameritech did not comply with federal law regarding the checklist item, including pricing of some UNEs. The Commission did not have authority to set prices in that docket; however, it did include in the ultimate finding several changes which would have been necessary for Ameritech to make in order for it to comply with federal statutes (May 30, 1997 Second Order, pp. 84 – 85). Ameritech did not refile rates, nor did it continue to pursue 271 authorization at that time, nor did it make a separate filing to incorporate the identified corrections in its rates prior to the Unbundled Network Element (“UNE”) pricing docket (6720-TI-161.)

16. SBC Wisconsin provides UNEs in a manner that allows CLECs to combine them by offering various physical collocation arrangements and other technically feasible means.

17. SBC Wisconsin provides existing combinations of UNEs; that is, it does not separate UNEs that are already combined, unless the CLEC so requests.

18. SBC Wisconsin has an effective tariff (Tariff P.S.C. of W. No. 20, Part 19, Sections 15, 19, and 22), that provides for existing combinations, including Unbundled Network Element - Platform (“UNE-P”) and Enhanced Extended Links (“EELs”). SBC Wisconsin filed revisions to that tariff on November 4, 2002.

19. SBC Wisconsin offers an interconnection agreement amendment which a CLEC may execute that contains provisions for new UNE combinations, including the combinations offered under the tariff.

Checklist Item 3 – Poles, Ducts, Conduits and Rights-of-Way [47 U.S.C. § 271(c)(2)(B)(iii)]

20. SBC Wisconsin offers access to poles, ducts, conduits and rights-of-way to carriers through interconnection agreements (“Appendix ROW”). Appendix ROW contains all rates, terms and conditions, including provisions for a CLEC wanting to modify a structure, rearrange or replace an attachment, and to be reimbursed by other attaching parties who later use additional capacity created by a modification. At least two carriers have adopted this appendix as part of their interconnection agreements with SBC Wisconsin.

21. SBC Wisconsin will negotiate modifications or additions to Appendix ROW upon request by the CLEC.

22. General terms and conditions for pole attachment and conduit occupancy are also covered in SBC tariff P.S.C.ofW. 20, Part 2, Section 6.

23. SBC Wisconsin does not charge for rights-of-way when access to the rights-of-way is provided in connection with access to a structure, such as a pole or conduit. Charges for other rights-of-way are determined on a case-by-case basis depending on the size of the area to be used by the CLEC as well as the number of existing customers of SBC Wisconsin's easement.

24. SBC Wisconsin offers access to poles, ducts, conduits and rights-of-way to CLECs on a first-come, first-served basis as long as space is available.

25. CLECs have access to the same maps and engineering records that are used by SBC Wisconsin. CLEC requests for access are evaluated against the same capacity, safety, reliability and engineering standards used by SBC Wisconsin to assess their own facilities.

26. Assignment of occupancy space on poles or conduit, make-ready work and capacity expansion intervals are the same for both SBC Wisconsin and CLECs.

27. There are a series of performance measures that are used to evaluate whether SBC Wisconsin is providing non-discriminatory access to its poles, ducts, conduits and rights-of-way.

28. No party challenged SBC Wisconsin's evidence regarding its assertion that it provides non-discriminatory access to poles, ducts, conduits and rights-of-way consistent with the Telecommunications Act of 1996 and FCC rules.

Checklist Item 4 – Unbundled Local Loops [47 U.S.C. § 271(c)(2)(B)(iv)]

29. SBC Wisconsin offers network interface devices ("NIDs"), unbundled loops, unbundled subloops, and dark fiber.

30. SBC Wisconsin's definition of dark fiber includes deployed, unlit fiber cable that connects two points within the incumbent's network and has not been activated through

connection to the electronics that “light” the fiber and render it capable of carrying communication services.

31. Fiber that is in place, but not terminated, is not included in SBC Wisconsin’s definition of dark fiber and is therefore not provided to the competing providers under dark fiber offerings.

32. SBC Wisconsin requires CLECs to submit a dark fiber inquiry, specifying point-to-point (A-Z) dark fiber requirements.

33. SBC Wisconsin does not provide information to the competing providers on the location and availability of dark fiber.

34. SBC Wisconsin does not notify CLECs when dark fiber becomes available or when new dark fiber is terminated in an area.

35. SBC Wisconsin identifies fiber through the company’s internal record system. Spare terminated fiber is recorded in TIRKS (Trunks Integrated Records System), a system licensed by Telecordia Technologies.

36. No independent method exists to confirm or challenge the unavailability of dark fiber. A CLEC’s recourse to dispute a rejected dark fiber inquiry is either to request a review by the account manager or to seek dispute resolution under the CLEC’s interconnection agreement.

37. SBC Wisconsin offers three forms of hot cuts. A hot cut is the physical changing of a customer’s service from one local exchange service provider to another without interrupting service to that customer.

38. SBC Wisconsin has established processes and procedures regarding the use of UNE-Loops for advanced services including line sharing and line splitting.

39. SBC Wisconsin has various performance measures to determine if SBC Wisconsin offers non-discriminatory access to all aspects of this checklist item.

40. The Commission has noticed the disputed issues of removal of non-excessive bridged tap and loop conditioning for investigation in a separate proceeding, Docket 6720-TI-177.

Further, these issues can be addressed as part of Phase II of this proceeding and due to the pendency of that proceeding, no determination is made with regard to checklist compliance for this item at this time.

41. Other evidence in this proceeding was not sufficiently conclusive to resolve these disputed issues regarding line-splitting, however, the Michigan Public Service Commission issued a decision regarding these issues in its October 3, 2002, order in Case No. U-12320, which was referenced in this proceeding

Checklist Item 5 – Unbundled Local Transport [47 U.S.C. § 271(c)(2)(B)(v)]

42. SBC Wisconsin has interconnection agreements and tariffs that contain binding terms and conditions for both dedicated and shared transport.

43. SBC Wisconsin offers dedicated transport at the following transmission speeds: DS1, DS3, OC3, OC12, and OC48. Multiplexing is also available, allowing customers to convert from lower to higher speeds and vice versa.

44. SBC Wisconsin offers dedicated transport in the form of dark fiber although some restrictions apply.

45. SBC Wisconsin offers shared transport to CLECs and when combined with unbundled Local Switching, permits CLECs to use SBC Wisconsin's existing routing tables

contained in SBC Wisconsin's switches to route traffic in the same manner as SBC Wisconsin's retail service.

46. SBC Wisconsin is responsible for all engineering, provisioning, and maintenance of the underlying equipment when a CLEC purchases Unbundled Local Switching – Shared Transport (ULS-ST.)

47. SBC Wisconsin has a series of performance measures that are used to evaluate whether SBC Wisconsin is providing non-discriminatory access to UNE-Transport services.

Checklist Item 6 – Unbundled Local Switching [47 U.S.C. § 271(c)(2)(B)(vi)]

48. SBC Wisconsin has legally binding interconnection agreements and approved tariffs outlining the rates, terms and conditions for unbundled local switching (ULS).

49. SBC Wisconsin's unbundled switching product provides competing carriers "all features, functions, and capabilities of the local switch" for which it has retail equivalents. SBC Wisconsin's ULS also includes "all vertical features resident in the switch," for which it has retail equivalents.

50. SBC Wisconsin's ULS offering provides competing carriers access to features, functions, and capabilities of the local switch including a telephone number, dial tone, signaling and access to 911, operator services, directory assistance and features and functions.

51. CLECs have access to the same local and tandem switching capabilities and functions that are available in SBC Wisconsin's network.

52. SBC Wisconsin offers competing carriers "access to all call origination and completion capabilities (including intraLATA and interLATA toll calls), and the CLEC is

entitled to all revenues associated with its use of those capabilities, including access and toll revenues.”

53. SBC Wisconsin provides a variety of switch ports.

54. SBC Wisconsin provides all necessary information to allow CLECs to bill exchange access, toll and reciprocal compensation.

Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services [47 U.S.C. § 271(c)(2)(B)(vii)]

55. SBC Wisconsin provides CLECS with access to 911 and E911 in the same manner as that provided to its own retail customers. CLECs who use SBC Wisconsin's 911 service may interconnect with SBC Wisconsin using dedicated trunks, or may provide their own trunks or use a third party. Trunking arrangements are the same for both CLECs and SBC Wisconsin.

56. SBC Wisconsin is the "custodian" of the municipal street address guide (MSAG) database, however, a copy of the database is provided to CLECs so that they may pre-validate their end user records before submitting them.

57. SBC Wisconsin and its partner, Intrado, detect and correct data errors for CLEC customers in the 911 databases in the same manner and by the same employees that detect and correct errors for SBC Wisconsin's customers.

58. CLECs that resell SBC services may purchase operator service / directory assistance OS/DA services for resale. CLECs using the UNE-P may also choose to have OS/DA services provided by SBC Wisconsin or may chose to custom route to itself or a third party. CLEC customers using SBC OS/DA use the same dialing arrangements as used by SBC Wisconsin's retail customers. The rates for OS/DA are market-based.

59. CLECs that are switched-based may route OS/DA traffic to SBC Wisconsin's platform, provide the service themselves or route the traffic to a third party. Switch-based CLECs that use SBC Wisconsin's services are billed at the rate contained in their contract.

60. SBC Wisconsin provides DAL information in bulk format to competing carriers that desire to provide their own directory assistance services. Daily updates are provided to CLECs. Access to DAL information is available via magnetic tape, cassette, or electric transmission. CLECs may also have direct access to the same database and in the same format as used by SBC Wisconsin retail operations on a query-by-query basis.

61. SBC Wisconsin has made available Custom Routing throughout Wisconsin and such is included in two Wisconsin interconnection agreements: AT&T/Ameritech (05-MA-120) and TDS Metrocom/Ameritech (05-MA-123). In both cases the arbitration panels found that customized routing was adequate, and that OS should be provided as a competitive service, not as a UNE.

62. SBC Wisconsin offers competing carriers two forms of Customized Routing - Advanced Intelligent Network (AIN) and Line Class Code using either interconnection contracts or approved tariffs. The *bona fide* request (BFR) process is available for CLECs who request other forms of Customized Routing. SBC Wisconsin's Customized Routing products are currently offered to CLECs at market-based prices.

63. WCOM has not properly submitted a BFR requesting its form of custom routing and the record evidence is insufficient to determine if its custom routing request would be feasible for SBC Wisconsin to provide.

64. The Commission would prefer that SBC Wisconsin and WCOM remove the use restriction, as opposed to leaving the restriction intact but not enforcing it.

Checklist Item 8 – White Pages Directory Listings [47 U.S.C. § 271(c)(2)(B)(viii)]

65. SBC Wisconsin does not print or provide telephone directories. Directories, including both white and yellow pages, are provided by a separate subsidiary of SBC Communications, Ameritech Advertising Services (AAS).

66. SBC Wisconsin provides all UNE-P and Resale customers with a White Page (WP) listing in the same manner (including size, font and typeface) as those provided to retail customers.

67. As of February 2002, over 147,000 CLEC end users were listed in SBC Wisconsin's WP directories.

68. Appendix WP, included in the Generic Interconnection Agreement, contains the rates, terms and conditions by which CLECs may purchase Primary, Additional, and Foreign Listings.

69. Delivery of the WP directories to CLEC customers is provided in the same manner and at the same time that directories are delivered to SBC Wisconsin's retail customers.

70. SBC Wisconsin states that CLECs have the option of receiving two opportunities to review the WP listings prior to publishing to verify the accuracy and completeness of their listings.

71. Web-based instructions for proper formatting of WP listings are provided to CLECs as well as instructor-led workshops regarding the reading, formatting and ordering of multiple types of directory listings.

72. SBC Wisconsin has implemented a series of performance measures used to track and monitor SBC Wisconsin's performance relative to this checklist item.

Checklist Item 9 – Numbering Administration [47 U.S.C. § 271(c)(2)(B)(ix)]

73. Until March 1999, SBC Wisconsin served as the Central Office Code Administrator for the Ameritech region and provided non-discriminatory access to telephone numbers to all carriers using industry-adopted procedures.

74. On March 29, 1999, this responsibility was transferred to NeuStar (formerly Lockheed Martin) and SBC Wisconsin has had no responsibility for number administration since then.

75. No party challenges SBC Wisconsin's assertions by claiming that SBC Wisconsin did not provide non-discriminatory access to telephone numbers.

Checklist Item 10 – Databases and Associated Signaling [47 U.S.C. § 271(c)(2)(B)(x)]

76. SBC Wisconsin has tariffs on file and has approved interconnection agreements containing rates, terms and conditions for access to databases and associated signaling.

77. SBC Wisconsin provides access to the following call-related databases: Advanced Intelligent Network (AIN) database; the Toll Free Calling/800 database; the Line Information Database (LIDB), the Calling Name Database (CNAM) and the Operator Services Marketing Order Processor (OSMOP).

78. Worldcom has identified particular errors in the CNAM database related to Illinois customers. Since the databases involved are regional, similar errors could affect Wisconsin customers. However, the number of errors identified to date does not lead to the conclusion that systemic problems exist.

79. SBC Wisconsin may reasonably maintain a separate pricing structure for LIDB access, with one price structure applying when the access is made for purposes of local services, and a second pricing structure applying when access is made for purposes of toll services.

Checklist Item 11 – Number Portability [47 U.S.C. § 271(c)(2)(B)(xi)]

80. SBC Wisconsin has deployed Local Number Portability (LNP) in 100% of its exchanges and has had an effective tariff, outlining the rates, terms and conditions for LNP cost recovery, on file with the FCC since July 1999.

81. SBC Wisconsin has ported over 268,000 telephone numbers through January 2002.

82. No party has challenged SBC Wisconsin's evidence regarding its implementation of number portability or its cost recovery tariff.

83. Performance of local number portability database access is being tested in the OSS docket (6720-TI-160).

Checklist Item 12 – Local Dialing Parity [47 U.S.C. § 271(c)(2)(B)(xii)]

84. SBC Wisconsin's interconnection arrangements do not require competing carriers to use access codes or additional digits to complete local calls to SBC Wisconsin customers.

85. SBC Wisconsin's customers are not required to use access codes or dial additional digits when placing local calls to CLEC customers.

86. CLEC switches are connected to SBC Wisconsin's network in the same manner as SBC Wisconsin connects its own switches, thus eliminating built-in dialing delays.

87. No party has challenged SBC Wisconsin's evidence regarding its assertion that it provides local dialing parity consistent with the Act and FCC rules.

Checklist Item 13 – Reciprocal Compensation [47 U.S.C. § 271(c)(2)(B)(xiii)]

88. Several interconnection agreements containing all rates, terms and conditions for reciprocal compensation pursuant to FCC and PSCW rules have been approved by the Commission. CLECs may choose one of these contracts, negotiate a different form of reciprocal compensation, or seek arbitration before the Commission.

89. SBC Wisconsin has binding interconnection agreements in place with multiple forms of reciprocal compensation, including, TDS and AT&T, both have effective contracts with reciprocal compensation provisions.

Checklist Item 14 – Resale [47 U.S.C. § 271(c)(2)(B)(xiv)]

90. SBC Wisconsin offers resale services via interconnection agreements and tariffs.

91. The rates, terms and conditions for resale services were approved by the Commission in Docket 6720-TI-120.

92. SBC Wisconsin does not provide advanced services. Advanced services are provided via an affiliate, Ameritech Advanced Data Services (AADS). AADS offers resale services via interconnection agreements.

93. AADS offers resale of DSL Transport services but not at a wholesale discount.

Section 271(D)(3)(C) – Public Interest Standard

94. The Commission has approved remedy plan amendments to voluntary interconnection agreements between SBC Wisconsin and TDS, and between SBC Wisconsin and Time Warner Communications.

95. The Commission's statewide remedy plan as ordered in docket 6720-TI-160 has been vacated and is under judicial review on appeal.

96. The Commission's order in docket 6720-TI-160 that requires SBC Wisconsin to tariff certain UNEs has been vacated and is under judicial review on appeal.

97. The Commission declined to investigate structural separation for SBC Wisconsin's wholesale operations in docket 6720-TI-166.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction under Wis. Stat. §§ 196.02, 196.03, 196.219, 196.28, 196.37(2) and 47 U.S.C. § 271 to issue this decision related to SBC Wisconsin's compliance with 47 U.S.C. § 271.

Track A

2. SBC Wisconsin has met Track A requirements by demonstrating that it has entered into interconnection agreements with one or more competing providers of "telephone exchange service ...to residential and business customers".³

3. SBC Wisconsin has further met Track A requirements by demonstrating that "at least one "competing provider" constitutes an actual commercial alternative to the Regional Bell Operating Company (RBOC), which a RBOC can do by demonstrating that the provider serves "more than a *de minimis* number of subscribers."⁴

4. Because all the estimates for the number of CLEC access lines put forth by the parties are greater than a *de minimis* number, the standard the FCC has used in other dockets, the

³ Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey, CC Docket No.02-67, Memorandum Opinion and Order, 02-189 (2002) (*Verizon New Jersey Order*)

⁴Id (*Verizon New Jersey Order*)

Commission does not need to resolve the factual dispute over the number of CLEC access lines at this time.

Checklist Item 1 – Interconnection [47 U.S.C. § 271(c)(2)(B)(i)]

5. At this time, and subject to the outcome of Phase II, the Commission tentatively concludes that SBC Wisconsin has complied with 47 U.S.C. § 271(c)(2)(B)(i).

6. 47 U.S.C. § 271(c)(2)(B)(i) requires the SBC Wisconsin to provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

7. SBC Wisconsin must develop procedures to permit Norlight to migrate its circuits in 10 days from meet-span to collocation arrangements. If Norlight is not satisfied with SBC Wisconsin's resolution of this matter the Commission could consider the matter in Phase II of this proceeding.

8. Direct CLEC access to its demarcation point on an MDF is not necessary for 271 compliance.

9. SBC Wisconsin's requirement for direct trunking to an end office or another carrier when a CLEC's traffic reaches a predetermined level at the tandem is not inconsistent with 271 requirements.

10. There are no other legal obligations for SBC Wisconsin to negotiate interconnection agreements for purposes of 271 approval beyond those in §§ 271 and 252.

11. With limited exceptions, SBC Wisconsin offers interconnection rates, terms and conditions that are just, reasonable, and non-discriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. The

Commission's conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting three months of performance data.

Checklist Item 2 – Unbundled Network Elements [47 U.S.C. § 271(c)(2)(B)(ii)]

12. Except for the compliance actions identified in findings of fact 17, below, and subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. Section 271(c)(2)(B)(ii)

13. The provisions of SBC Wisconsin's tariff and model interconnection agreement for the offering of UNEs are unreasonably restrictive. SBC must rectify these problems by eliminating the "reservation of rights" language identified by AT&T, by modifying the BFR-OC as was done by SBC Illinois, and by eliminating the collocation requirement for EELs.

14. SBC Wisconsin must commit to filing UNE Combinations amendments within ten business days of execution.

15. All issues related to the functioning, reliability and adequacy of OSS will be addressed in Phase II of this docket.

16. All issues related to the pricing of UNEs, UNE-P and combinations of UNEs will be addressed in Phase II of this docket.

17. The issue of whether SBC Wisconsin may withdraw its UNE combinations tariff, and the authority of the PSCW in that regard, is deferred until the FCC issues its Triennial Order. If that Order is issued in time, these issues will be considered in Phase II.

18. SBC Wisconsin cannot be considered to be compliant with 47 U.S.C. § 271(c)(2)(B)(ii) until it has revised its tariff to eliminate the "reservation of rights" section and modify the BFR-OC provisions, and eliminated the collocation requirement for EELs.

19. SBC Wisconsin cannot be considered to be compliant with 47 U.S.C. § 271(c)(2)(B)(ii) until satisfactory conclusion of the Phase II and third party OSS testing.

20. SBC Wisconsin must submit a Compliance Plan addressing the following issues to be in compliance with 47 U.S.C. Section 271(c)(2)(B)(ii):

- a) Modify its combinations offering to exclude the restrictions outlined by AT&T.
- b) Modify its combinations offering to include the BFR-OC process discussed by Time Warner and included in the Illinois combinations offering.
- c) Modify its combinations offering to exclude collocation requirements for EELs
- d) Commit to filing UNE combinations amendments within 10 business days of execution.

Checklist Item 3 – Poles, Ducts, Conduits and Rights-of-Way [47 U.S.C. § 271(c)(2)(B)(iii)]

21. Subject to the outcome in Phase II of this docket, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(iii) of the Act.

22. The Commission tentatively concludes at this time that SBC Wisconsin has fully complied with Checklist Item 3 pertaining to poles, ducts, conduits and rights-of-way. The Commission will make a final determination after a thorough review of the OSS third party test and the supporting three months of performance data in Phase II of this docket.

Checklist Item 4 – Unbundled Local Loops [47 U.S.C. § 271(c)(2)(B)(iv)]

23. Except as noted below, and subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(iv).

24. Determination of the non-excessive bridged tap issue will be determined in Docket 6720-TI-177 and will be incorporated by reference into this proceeding.

25. SBC Wisconsin must comply with the following to be in compliance with 47 U.S.C. § 271(c)(2)(B)(iv):

- a) Modify its dark fiber offerings to include all fiber in place including those segments that are not terminated.

- b) Provide CLECs with access to dark fiber information that it uses for itself including its availability and location.
- c) Modify its procedures to permit CLECs to inspect and verify SBC Wisconsin's assertions regarding the lack of dark fiber.
- d) Notify carriers when dark fiber becomes available.
- e) Comply with its interconnection agreements with AT&T and TDS regarding the migration of voice service to the UNE-P in a line-splitting situation as described herein.
- f) File its Michigan Compliance Plan addressing line-splitting scenarios as part of this record as described herein.

26. As an alternative to further development of the record via an evidentiary hearing that may otherwise be necessary to dispose of this issue, the Commission will order that SBC Wisconsin file in this proceeding the compliance plan filed by SBC Michigan in response to the Michigan Public Service Commission's October 3, 2002, order in Case No. U-12320. The record in this proceeding can then be developed by seeking comments from interested parties as part of Phase II of this proceeding.

27. Other issues raised by the Parties are deferred to Phase II including:

- a) SBC Wisconsin's hot cut performance.
- b) SBC Wisconsin's xDSL provisioning performance.
- c) SBC Wisconsin's loop qualification information.
- d) SBC Wisconsin's ordering and provisioning of sub-loops.

Checklist Item 5 – Unbundled Local Transport [47 U.S.C. § 271(c)(2)(B)(v)]

28. Except as noted below, and subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. Section 271(c)(2)(B)(v).

29. SBC Wisconsin must file a Compliance Plan to modify its dark fiber offering as outlined for Checklist Item 4 to be in compliance with 47 U.S.C. Section 271(c)(2)(B)(v)

Checklist Item 6 – Unbundled Local Switching [47 U.S.C. § 271(c)(2)(B)(vi)]

30. Except as noted below, and subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(vi).

31. SBC Wisconsin may grandfather services, a process under which the company will not accept new retail customers for the service, although existing customers retain the service until they chose to cancel that service. However, SBC Wisconsin is required to continue providing a UNE service or switch functionality, if that functionality is being requested, and/or used, by competitors, even if the retail equivalent of the service is grandfathered.

32. It is reasonable for SBC Wisconsin to require a BFR process for those switch functions which it has not installed and/or activated in a switch. The BFR process will review technical feasibility and develop pricing, based on the cost of activation.

33. It is not reasonable for SBC Wisconsin to use a BFR process for CLECs to request services which SBC Wisconsin had previously provided to UNE or UNE-P customers, even if SBC Wisconsin began grandfathering the retail analogs of those services. In such cases, the cost and technical feasibility of the service is known, since the service had been previously provided. Even if SBC Wisconsin chooses to grandfather a retail service, it must continue to provide the UNE equivalent to requesting CLECs.

34. AT&T's concerns regarding Privacy Manager were raised too late in the process to warrant consideration in this proceeding. Although SBC Wisconsin filed the tariff requiring a BFR for use of the Service Creation Environment on May 18, 2000, AT&T did not raise this issue prior to its comments of December 5, 2001.

35. The impact of the *USTA* case will be considered in Phase II of this proceeding

36. The extent to which switch translation errors persist, or have been rectified, will be considered in Phase II of this proceeding.

37. SBC Wisconsin must submit a Compliance Plan addressing the following to be in compliance with 47 U.S.C. §271(c)(2)(B)(vi):

- a) SBC Wisconsin must provide RACF as described by AT&T.
- b) As part of its compliance plan, SBC Wisconsin must show that it no longer requires a BFR for CLECs ordering or using switch functionalities that were being provided to UNE or UNE-P customer, even if the retail equivalent of the service is being grandfathered.
- c) As part of its compliance plan, SBC Wisconsin must report on the development of procedures for allowing migration of customers with RCF to UNE-P, as described by Z-Tel and in SBC Wisconsin's reply to the Z-Tel's affidavit, and show that the procedures are being implemented in a timely manner.

Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services [47 U.S.C. § 271(c)(2)(B)(vii)]

38. Subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(vii) of the Act and provides "nondiscriminatory access to 911 and E911 services, directory assistance services to allow the other carrier's customers to obtain telephone numbers and operator call completion services."

39. SBC Wisconsin's Customized Routing offerings satisfy the FCC's requirements for customized routing as set forth in its UNE Remand Order; therefore, SBC Wisconsin's OS/DA services are not classified as UNEs, and may be offered at non-TELRIC rates.

40. It is necessary for CLECs to follow the BFR process to request Customized Routing by means other than those currently offered by SBC Wisconsin.

41. Access to the Directory Assistance Listing (DAL) database is not a UNE, and need not be priced at TELRIC rates.

42. Contested Custom Routing pricing issues will be addressed the UNE pricing docket (6720-TI-161) and in Phase II of this proceeding

Checklist Item 8 – White Pages Directory Listings [47 U.S.C. § 271(c)(2)(B)(viii)]

43. Subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(viii) and provides white pages directory listings for CLEC customers.

44. In compliance with federal rules, SBC Wisconsin provides a local alphabetical directory that includes residential and business listings of the customers of the local exchange provider, including the subscriber's name, address, telephone number, or any combination thereof.

45. In compliance with federal rules, SBC Wisconsin provides nondiscriminatory appearance and integration of white page directory listings to CLECs' customers and provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.

46. The Commission need not decide, for the purposes of 271 compliance, whether SBC Wisconsin has deployed a single interface for ordering UNE-Loops and directory listings.

Checklist Item 9 – Numbering Administration [47 U.S.C. § 271(c)(2)(B)(ix)]

47. The Commission concludes that SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(ix) of the Act, which requires SBC Wisconsin to provide "...nondiscriminatory

access to telephone numbers for assignment to the other carrier's telephone exchange service customers.”

48. Further, inasmuch as this checklist item is not part of the OSS third party test and has no TELRIC cost components, there are no unresolved issues relating to this section for Phase II of this proceeding.

Checklist Item 10 – Databases and Associated Signaling [47 U.S.C. § 271(c)(2)(B)(x)]

49. Subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(x) of the Act and provides nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

50. The CNAM database is not a UNE, and access to the database need not be priced at TELRIC prices.

51. The number of errors in the CNAM database identified in the record does not rise to a level of systemic problems, and therefore does not indicate non-compliance with this checklist item.

Checklist Item 11 – Number Portability [47 U.S.C. § 271(c)(2)(B)(xi)]

52. There is no credible evidence to suggest that SBC Wisconsin fails to meet the technical, operational, architectural and administrative requirements established by the FCC for both LNP deployment and cost recovery.

53. The Commission tentatively concludes at this time that SBC Wisconsin has fully complied with 47 U.S.C. § 271(c)(2)(B)(xi) of the Act and providing nondiscriminatory access to number portability. The Commission will make a final determination after a thorough review

of the OSS third party test results and the supporting three months of performance data to be submitted in Phase II of this docket.

Checklist Item 12 – Local Dialing Parity [47 U.S.C. § 271(c)(2)(B)(xii)]

54. The Commission tentatively concludes at this time that SBC Wisconsin has fully complied with 47 U.S.C. § 271(c)(2)(B)(xii) of the Act pertaining to local dialing parity. The Commission will make a final determination after a thorough review of the OSS third party test and the supporting three months of performance data in Phase II of this docket.

Checklist Item 13 – Reciprocal Compensation [47 U.S.C. § 271(c)(2)(B)(xiii)]

55. Subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(xiii) of the Act and provides “reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”

56. SBC Wisconsin has binding interconnection agreements in place with multiple forms of reciprocal compensation which it is paying.

57. Denial of a CLEC’s right to opt-into a contract made effective since the ISP order, is a compliance matter that CLECs should bring to the attention of the Commission for resolution.

Checklist Item 14 – Resale [47 U.S.C. § 271(c)(2)(B)(xiv)]

58. Subject to the outcome of Phase II, SBC Wisconsin complies with 47 U.S.C. § 271(c)(2)(B)(xiv) of the Act and provides telecommunications services for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

59. AADS provides resale services in accordance with federal laws and regulations.

60. The extent to which SBC Wisconsin’s OSS interfaces provide nondiscriminatory access to resale services will be determined in Phase II of this docket.

Section 271(D)(3)(C) – Public Interest Standard

61. 47 U.S.C. § 271(D)(3)(c) states that the FCC shall not approve a 271 application “unless it finds that the requested authorization is consistent with the public interest, convenience, and necessity.”

62. The Commission has authority to inform and advise the FCC of relevant facts and opinions with respect to the FCC’s public interest inquiry.

63. A UNE rate freeze, as proposed by CLECs, is contrary to 47 U.S.C §§ 251 & 252, and Wis. Stats. §§ 196.03(6), 196.04, and 196.219, which authorizes the Commission to resolve disputes and to set reasonable rates, term and condition for UNEs.

64. Structural separation for wholesale services is not required under the public interest standard as set forth in 47 U.S.C. § 271(D)(3)(c).

65. The Commission retains its jurisdiction under Wis. Stat. § 196.204(3) to order structural separation.

66. The Commission retains its jurisdiction under both federal and state law to certify, with or without conditions, SBC Wisconsin, or its appropriate affiliate, to provide in-region long distance service.

67. The Commission has state law authority to investigate and order performance measures and remedies for SBC Wisconsin’s intrastate special access services, but would do so in a separate docket apart from this investigation into 271 compliance.

68. Except as otherwise set forth in this decision, the Commission defers any determinations regarding the public interest inquiry and the associated disputed issues pending

completion of Phase II of this proceeding. The Commission believes that these issues are best addressed after reviewing the entire record in this proceeding.

OPINION

Track A

1. Statutory Requirement

Carriers seeking 271 approval must comply with either the Track A or Track B requirements outlined in the Act. To comply with Track A, the applicant must demonstrate that “it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers... to residential and business subscribers” In addition, the Act states that competitive carrier may offer services “either exclusively over [its own network] ... or predominately over [its own network] in combination with the resale of the telecommunications services of another carrier.” under 47 U.S.C. § 271 (c) (1) (A).

Track B outlines the requirements for the Statement of Generally Available Terms (SGAT) and is generally used if no competing carrier has requested access and interconnection to the RBOC’s network.

2. FCC Discussion Regarding Compliance

As discussed in previous FCC 271 orders, the Track A requirement is satisfied if the applicant demonstrates that it has one or more interconnection agreements with CLECs that collectively serve both residential and business customers. (VA, App. C, ¶ 5). The FCC has further held that “a BOC must show that at least one” competing provider constitutes an actual

commercial alternative to the BOC. The Commission has interpreted Track A not to require any particular level of market penetration under 47 U.S.C. § 271(c)(2)(A)

3. Disputed Issues

- What is the legal standard for Track A compliance?
- Has SBC Wisconsin met that standard? (For instance, SBC Wisconsin must show that facilities-based competitors are an “actual commercial alternative” for residential customers.)

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavit filed by Ms. Deborah Heritage, SBC Wisconsin argues that it has met the requirements of Track A by identifying at least five CLECs that have binding interconnection contracts and are providing services to both residential and business customers either exclusively or predominately over their own facilities. These carriers include AT&T (offering facilities-based voice service to business customers), TDS Metrocom, Choice One, KMC Telecom and McLeod. In total, SBC Wisconsin states that as of February 2002, it has entered into over 90 interconnection and resale contracts in the State of Wisconsin. (Heritage Aff. ¶¶ 4)

SBC Wisconsin also argues that competition is thriving in Wisconsin. For example, SBC Wisconsin states that during 2001, CLECs’ facilities-based E911 listings grew at 70% and unbundled loops more than doubled; existing CLEC collocation arrangements are sufficient to reach 84% of the business market and 87% of the residential market and; CLEC switch capacity can support 100% of the market. (SBC Wisconsin Brief p. 5) SBC Wisconsin also attempts to

estimate the level of CLEC activity by estimating the amount of UNE-P, interconnection trunks, UNE-Loops, E911 listings, ported numbers and resale purchased by CLECs.

Finally, SBC Wisconsin argues that competition is thriving in both urban and rural areas and states that CLECs are operational in Beaver Dam, Little Chute and Stevens Point. (SBC Wisconsin Brief p. 5)

AT&T

Through an affidavit filed by Mr. Steve E. Turner, AT&T argues that SBC Wisconsin has not complied with the Track A requirements. According to Mr. Turner, “facilities-based competition exists only in a very limited form in Wisconsin and at such a nascent level that it cannot provide a ‘check’ on the anticompetitive tendencies of a local exchange service monopoly such as Ameritech [SBC].” (Turner Aff. ¶ 6) Mr. Turner asserts that competition in Wisconsin is concentrated primarily on Internet Service Providers (ISPs) and that after accounting for ISP traffic, competing carriers carry only about 5.2% of local traffic. (Turner Aff. ¶ 7 and 15-16)

Mr. Turner also challenges Ms. Heritage’s conclusions and states that her analysis “produce flawed and misleading estimates of the level of actual competition.” (*Id.*) Mr. Turner states that based on data from Ms. Heritage’s affidavit and FCC ARMIS data, CLECs have about 5.4% of the access lines, and that comparing switching capacity is not reasonable due to SBC Wisconsin’s excess switch capacity. (*Id.* ¶ 18-20) Mr. Turner also believes that Ms. Heritage used “faulty assumptions regarding interconnection trunks that dramatically skew the results.” (*Id.* ¶ 23) Specifically, Mr. Turner believes that Ms. Heritage’s interconnection trunk-to-line equivalent ratio of 2.75 is too high and that a more realistic ratio should be 1:1. (*Id.* ¶ 25) Mr. Turner also believes that Ms. Heritage’s use of the E911 database to estimate residential versus

business competition is inaccurate, resulting in an underestimation of business competition and an overestimation of residential competition. (*Id.* ¶ 28).

Finally, Mr. Turner states that many of the CLECs relied upon by SBC Wisconsin to demonstrate compliance with the Track A requirements “are either in bankruptcy or in grave financial circumstances” including CoreComm, Covad Communications, Global Crossing, McLeod, Mpower, Teligent and WinStar. (*Id.* ¶ 34-35) According to Mr. Turner, “Ms. Heritage has not only exaggerated the general condition of competitors in Wisconsin, it has painted an unrealistic picture of the state of its primary CLEC competitors in Wisconsin.” (*Id.* ¶ 36). Mr. Turner concludes that only two CLECs – AT&T and TDS – could be considered viable Track A competitors. (*Id.*)

McLeod, Northern Telephone Data and TDS, in a joint brief, these CLECs assert that, “SBC/Ameritech cannot establish compliance with the requirements of Section 271(c)(1)(A), because facilities-based competition has yet to take root in Wisconsin. Competition is not thriving in Wisconsin and SBC/Ameritech’s data is replete with inaccuracies and distorts the actual level of competition in Wisconsin.” (Joint Brief, p. 2)

These parties contribute the slow growth of local competition to SBC Wisconsin’s marketing practices and SBC Wisconsin’s ValueLink tariffs (*Id.* p. 9 and 11) These parties contend that SBC Wisconsin’s ValueLink tariffs thwart local competition because they require customers to sign exclusive, long term contracts. If a ValueLink customer desires to switch to a CLEC, SBC Wisconsin imposes large termination fees on the customer. (*Id.* p. 11-12) These parties assert that these termination fees are anti-competitive because they are excessive, and “bear no relationship to any reasonable actual damage SBC/Ameritech could assert.” (*Id.* p. 12)

According to the parties, a complaint was filed in Illinois and the commission concluded that ValueLink contracts were anti-competitive and that the termination charges were “unjust, unreasonable, and anti-competitive.” (*Id.* p. 13-14) These CLEC also request that their comments regarding ValueLink be included in the Commission’s public interest analysis.

These parties also state that while the number of certified CLECs has increased, “the number of those CLECs actually providing service to customers in Wisconsin is less than one-quarter of those certified.” (*Id.* p. 10)

TDS Metrocom

In an affidavit filed by Mr. Cox, TDS asserts that “competition is not thriving in Wisconsin.” (Cox Affidavit ¶ 8). Citing testimony filed by the Illinois Commerce Commission (ICC) staff, Mr. Cox states that SBC Wisconsin’s assessment of local competition is unreliable, inflated or inconsistent. (*Id.* ¶ 8)

SBC Wisconsin Reply

In response, SBC Wisconsin argues that the CLEC assertions are irrelevant for purposes of meeting the Track A requirements. SBC Wisconsin argues that Track A does not require any particular level of market penetration. (SBC Wisconsin Reply Brief p. 13) SBC Wisconsin also states that while CLECs challenge the data and methodology used for estimating the level of CLEC activity, the CLECs do not challenge the conclusions that SBC Wisconsin satisfies the requirements for Track A. (*Id.* p. 14)

Ms. Heritage filed a reply affidavit asserting that the level of competition in Wisconsin exceeds the level of competition for other 271 applications approved by the FCC. (Heritage Reply Affidavit ¶ 12) In addition, Ms. Heritage states that TDS did not provide any “analysis or

specific Wisconsin data to support [their] claims that Ameritech [SBC] Wisconsin cannot meet the requirements of Track A” (*Id.* ¶ 13) In response to Mr. Cox’s citation to ICC Staff in Illinois to support his statements, Ms. Heritage states that the ICC staff did conclude that SBC Illinois satisfied the Track A requirements. (*Id.*) In response to AT&T’s critical analysis of SBC Wisconsin’s data, Ms. Heritage states that, “[the] analysis of competition in Wisconsin uses the same methodologies and is consistent with the analysis performed in the Southwestern Bell (SWBT) states for their 271 applications, which have all been approved by the FCC.” (*Id.* 14)

In response to Mr. Turner’s statement regarding the financial viability of CLECs listed in SBC Wisconsin’s application, Ms. Heritage states that, “many of the companies that Mr. Turner considers to be dead or dying were far more optimistic about their future viability in their quarterly 2002 financial reports.” (*Id.* ¶ 40-42) According to Ms. Heritage, even WCOM is providing services to Wisconsin customers during its bankruptcy proceedings. (*Id.* ¶ 43)

SBC Wisconsin states that there is no issue with ValueLink because “ValueLink Optional Calling Plans have not been sold in Wisconsin since December 1999, and currently there are zero customers on effective service agreements with these plans.” (Mark S. Delo Reply Aff. ¶ 7)

In response to Mr. Cox’s assertions regarding the behavior of SBC Wisconsin’s employees, Mr. Muhs states that, “Purposeful mistreatment of a CLEC or their customer would be viewed as a serious violation of policy and the Code of Conduct causing the employee to be suspended pending dismissal.” (Muhs Reply Affidavit ¶ 21) Responding to specific allegations, Mr. Muhs states that after his investigation, he found the allegations, “to be inaccurate.” (*Id.* ¶ 24)

TDS's November 15, 2002 Filing

In a supplemental affidavit filed by Mr. Cox, TDS states that SBC Wisconsin does not comply with Track A requirements because SBC Wisconsin is discriminating against TDS. Mr. Cox asserts that examples have been provided describing SBC Wisconsin technicians failing to make repairs and making inappropriate comments to TDS customers, “that if the customer would return to SBC/Ameritech, they would not continue to have problems.” (Cox Supp. Affidavit ¶ 5-6) Mr. Cox also asserts that SBC Wisconsin’s newspaper and television advertising is anti-competitive because it portrays CLECs as “not real telephone companies and their use of SBC’s network at current rates is the cause for layoffs.” (*Id.* ¶ 7)

Mr. Cox also believes that, “SBC’s executive level comments in various states, and anti-competitive advertising in newspapers and on television, imply that CLECs are not real telephone companies and their use of SBC’s network at current rates is the cause for layoffs. This type of rhetoric from the highest levels of SBC encourages improper behavior from resources who are forced to provide service to both retail and wholesale customers.” (*Id.* ¶ 7) Mr. Cox asserts that, “TDS Metrocom still receives reports from its customers and its own technicians that this anti-competitive conduct continues.” (*Id.* ¶ 7)

TDS also requests that its comments regarding its experiences with SBC Wisconsin be included in the Commission’s public interest analysis

SBC Wisconsin’s November 15, 2002 Filing

Ms. Heritage filed a supplemental affidavit with updated statistics regarding the level of competition in Wisconsin. (Heritage Supp. Aff. ¶ 9-15) Her affidavit also requests, “that the data from the WPSC Staff’s competition survey in Docket 05-ST-109 be incorporated into this

proceeding as further evidence that SBC Wisconsin has met the requirements of Track A.”

(Heritage Supp. Aff. ¶ 7)

SBC Wisconsin’s December 5, 2002 Filing

In response to McLeod/ NTD/TDS that SBC Wisconsin does not comply with Track A because facilities-based competition has not developed, SBC Wisconsin states that, “This assertion is not legally relevant to the issue of Track A compliance.” (SBC Wisconsin Comments p. 3) According to SBC Wisconsin, the FCC and the D.C. Circuit have both rejected this argument; “the Act ‘imposes no volume requirements for satisfaction of Track A.’” (*Id.*, quoting the D.C. Circuit decision). *Sprint Communications Co. v. FCC*, 274 F.3d 549,553-54 (D.C. Cir 2001)

In response to intervenor arguments disputing SBC Wisconsin’s analysis regarding the level of competition, SBC Wisconsin states that, “The Commission need not ... resolve this particular factual dispute, because it is not relevant to the issue of SBC Wisconsin’s compliance with Track A. Based on uncontested evidence presented by SBC Wisconsin, we find that at least four CLECs (AT&T, TDS Metrocom, Choice One Communications (US Xchange), and KMC Telecom) ... are providing services to residential and business subscribers in Wisconsin either exclusively or predominately over their own facilities” and serve more than a *de minimis* number of customers. (*Id.* p. 4)

WCOM’s December 5, 2002 Filing

According to WCOM, “The issue here ... is not whether facilities-based local providers exist – indeed there appears to be little, if any debate as to whether facilities-based local providers exist – but the extent to which competition has a foothold in the Wisconsin local

market.” (WCOM Comments p. 5) WCOM recommends that the Commission consider using the independent data from the FCC and not the “highly suspect” diagnostic data offered by SBC Wisconsin. (*Id.*) However, WCOM asserts that FCC data “does not demonstrate sufficient competition to determine that the Wisconsin market is fully and irreversibly open to competition.” (*Id.* p. 8) WCOM also asserts that equally important to the consideration of Track A compliance is the fact that SBC/Ameritech have a concerted effort underway to decrease the level of competition in Wisconsin and have effectively “declared war” on competition. (*Id.* p. 6) As a result, WCOM recommends that the Commission consider SBC Wisconsin’s 271 application in a broader context, including its “advocacy outside of the confines of this proceeding.” (*Id.*)

AT&T’s December 5, 2002 Filing

AT&T believes that SBC Wisconsin’s data is “one-sided” and “filtered.” (AT&T Comments p. 4). AT&T agrees with the conclusions from a report prepared by the Michigan Public Service Commission (MPSC) staff which states that, “(t)here is a large discrepancy between what Ameritech [SBC] reports and what the CLEC report...and ...(t)his [discrepancy] can be attributed to what Ameritech [SBC] estimates as the number of lines that the CLECs provide over their own facilities and what the CLEC report as actual.” (*Id.*, p. 4, citing the MPSC Staff Report). AT&T states that the investment CLECs have made in switching is at risk if SBC enters the market prematurely (AT&T Comments p. 7).

TDS’s December 5, 2002 Filing

In response to comments by Mr. Muhs, Mr. Cox states that there is, “no way to know or verify what corrective actions, if any, have taken place regarding technician misconduct

...[brought] ... to SBC/Ameritech's attention." (Cox Reply Aff. ¶ 6) Mr. Cox also states that TDS, "should be informed of the corrective action taken by SBC/Ameritech to assure us that there will not be a re-occurrence of the same problem." (Cox Reply Aff. ¶ 6)

SBC Wisconsin's December 15, 2002 Filing

SBC Wisconsin recommends that the Commission ignore CUB's suggestion that it use 2001 end-of-year FCC data to determine the level of competition in Wisconsin. According to SBC Wisconsin, "The data in that report is nearly a year old, and the FCC itself does not rely on its report in evaluating section 271 applications because the report reflects results for the state as a whole, rather than focusing on the applicant's service area." (SBC Wisconsin Reply Comments p. 5) In response to WCOM's argument that SBC Wisconsin has declared a war on competition at the FCC, SBC Wisconsin asserts that, "the purpose of this proceeding is to evaluate Track A compliance now, on the basis of existing rules, not to speculate as the effect of proposed new rules that have not even been adopted by the FCC." (*Id.*)

AT&T's December 15, 2002 Filing

In its December 15, 2002 Reply Comments, AT&T asserts that, "The requirement that the local market in Wisconsin be irreversibly open to competition is not strictly a Track A requirement; rather, as a review of ... [past] FCC Orders indicate, it is a requirement that the RBOC must demonstrate before the FCC can conclude that granting in-region interLATA authority is consistent with the public interest, convenience and necessity." (AT&T Reply Comments p. 6)

WCOM's December 15, 2002 Filing

WCOM believes that the general state of competition is relevant to the analysis of Track A. If the Commission disagrees, then WCOM recommends that these issues be considered as part of the public interest analysis. According to WCOM, “whether under Track A or the public interest analysis, this Commission should consider the degree of local competition in this state, and SBC/Ameritech’s vociferous efforts to defeat it.” (WCOM Reply Comments p. 9)

5. Commission Recommendation

Based on the information provided in the record, the Commission concludes that SBC Wisconsin has fully met the requirements for Track A. According to the Act, SBC Wisconsin must demonstrate that “it has entered into one or more binding agreements ... [to] ...one or more unaffiliated competing providers... to residential and business subscribers.” In addition, the Act states that competitive carrier may offer services “either exclusively over [its own network] ... or predominately over [its own network] in combination with the resale of the telecommunications services of another carrier.” The Commission believes that SBC Wisconsin has made this showing by identifying the CLECs such as TDS Telecom, AT&T, KMC and Choice One that are offering local exchange services to both residential and business customers. SBC Wisconsin has also demonstrated that these CLECs have binding interconnection contracts in effect. Most telling is that the CLECs themselves do not challenge SBC Wisconsin’s evidence on these points. WCOM recommends that the Commission use the broader “fully and irreversibly open to competition.” However, this is not the standard for Track A compliance. Rather, this is the general standard for 271 approval. The FCC held that a BOC must show that at least one “competing provider” constitutes an “actual commercial alternative to a BOC. (*Verizon New*

Jersey Order). When the Commission enters Phase II of these proceedings and fully evaluates the third party OSS-test and other evidence, this standard will have more applicability.

The Commission agrees with SBC Wisconsin that the FCC and the Courts require that the BOC show that the competing providers serves more than the *de minimis* number of subscribers and does not impose specific volume requirement to satisfy Track A requirements. While there are many CLECs that are currently experiencing financial difficulties, there are others that SBC Wisconsin can use to demonstration checklist compliance (e.g. AT&T and TDS). Even WCOM, which is currently in bankruptcy proceedings, can be used to demonstrate Track A compliance.

Parties have provided a significant amount of information regarding the level of competition in Wisconsin. SBC Wisconsin has provided staff with information on the E911 data base used in calculating CLEC line estimates. While this information is interesting and useful in understanding the level of competitive entry, and may be more appropriate for the public interest determination, the Commission cannot find any statutory criterion that ties this information to determining Track A compliance.

Because SBC Wisconsin filed its application pursuant to Track A, there is no need for any further discussion regarding Track B.

Disputed Issues

- What is the legal standard for Track A compliance?

The legal standard is defined by the Act. More importantly, the Act does not indicate, and the Court has not interpreted, any reliance on market share, level of competition or any other metric test.

- Has SBC Wisconsin met that standard? (For instance, SBC Wisconsin must show that facilities-based competitors are an “actual commercial alternative” for residential customers.)

As discussed above, SBC Wisconsin has binding and effective interconnection agreements approved by the Commission under section 252 principles that specify the terms and conditions for interconnection and access to unbundled network elements. In addition, SBC Wisconsin offered evidence that demonstrated that CLECs are providing services to both residential and business customers either exclusively over their own network or predominately over their own network. This evidence was not challenged by the CLECs. Rather, the CLECs attempted to expand the definition to include a metric test which is not provided for in the Act.

CLECs and SBC Wisconsin dispute the methodology that each use for determining the number of lines that the CLECs presently serve. However, the Commission does not need to resolve this factual dispute further because previous FCC 271 orders for other states found that a BOC need show only that more than *de minimis* numbers of customers are served by CLEC providers. Further evaluation of the status of competition in the state may be addressed under the public interest section of this decision under Phase II. CLEC access line determinations will be further reviewed under Phase II of this proceeding and data will be incorporated into the record from PSC 2001 and 2002 CLEC survey data. The competitive companies do not dispute that multiple competitive providers are providing telephone exchange service to residential and business customers.

Checklist Item 1 – Interconnection

1. Statutory Requirement

Sec 271(c)(2)(B)(i) of the Act requires the applicant to provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

Section 251(c)(2) imposes a duty on incumbent carriers “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network: (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier’s network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms and conditions that are just, reasonable, and non-discriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.”

Section 252 outlines the requirements by which Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) negotiate or arbitrate interconnection agreements.

2. FCC Discussion Regarding Compliance

The FCC has concluded in prior orders that interconnection refers “only to the physical linking of two networks for the mutual exchange of traffic.” (VA, App. C, ¶ 17)

To comply with the “equal in quality” requirement, FCC rules require that the ILEC provision interconnection facilities to CLECs using the “same technical criteria and service standards” that are used for its own retail operations. Selected performance measures are used to validate this requirement and the FCC has concluded in prior 271 orders that “disparities in trunk

group blockage” would demonstrate that the applicant has not complied with the equal in quality requirement. (*Id.* ¶ 18)

To comply with the requirement that “rates, terms and conditions [be] just, reasonable and nondiscriminatory,” ILECs must offer interconnection to CLECs “in a manner no less efficient than the way in which the incumbent LEC provides comparable function to its own retail operations.” Selected performance measures are used to validate this requirement and the FCC has concluded in prior 271 orders that poor performance for installation time for interconnection service, provisioning of two-way trunks, and repair time for troubles affecting interconnection trunks are indications of noncompliance with this requirement. (*Id.* ¶ 19)

According to the FCC, technically feasible interconnection methods include, but are not limited to collocation (both virtual and physical) and meet point arrangements. The FCC has concluded that provisioning of collocation “is an essential prerequisite to demonstrating compliance” with this checklist item. In various orders, the FCC has expanded the types of collocation that must be offered to CLECs including: shared cage and cageless collocation arrangements. The FCC has also established: requirements on what types of equipment may be collocated by a CLEC; requirements that ILECs provide cross-connects between collocated carriers and; principles that govern space and configuration of collocation arrangements. To show compliance with the collocation obligations, the FCC has required the applicant to demonstrate that it has processes and procedures to offer collocation arrangements that are just, reasonable, and nondiscriminatory. Selected performance measures are used to validate this requirement including timeliness and efficiency of processing collocation applications and provisioning of collocation space. Finally, the 271 applicant must demonstrate that its

collocation arrangements are priced using TELRIC principles as required in Sec. 251(d)(1). (*Id.*

¶ 20-21)

3. Disputed Issues

Interconnection

- Can CLECs be required to interconnect directly with SBC Wisconsin's end offices and offices of other carriers when traffic reaches a predetermined level?
- If so, which party should bear the cost?
- Should CLECs be allowed to determine the point of interconnection between their network and SBC Wisconsin's network?
- In addition to its obligations under sections 251 and 252, are there other obligations upon SBC Wisconsin when negotiating interconnection agreements?
- Are the parties complying with their legal obligations to negotiate in good faith?
- Can SBC Wisconsin prevent a CLEC with an interconnection agreement from ordering interconnection or wholesale services out of an SBC Wisconsin tariff that has the same or similar services if there is nothing in the interconnection agreement that expressly prevents a CLEC from doing so?

Collocation

- Do CLECs have the right to access the demarcation point and/or associated cabling and terminal blocks, including those on SBC Wisconsin's MDF (or IDF) if the demarc point is located outside the CLEC's collocation cage?
- Regarding collocation provisioning intervals – is there any prohibition against coordinating activities between SBC Wisconsin's build out activities and CLEC vendor's cabling work?
- Does KPMG's OSS test include ordering and billing for collocation? If so, any such disputed issues will be deferred to Phase II.

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavits filed by Mr. William C. Deere and Mr. Scott J. Alexander, SBC Wisconsin states that it has fully complied with this checklist item through the implementation of binding terms and conditions for interconnection in its approved interconnection agreements. (Alexander Aff. ¶ 10)

As described by both Messrs. Deere and Alexander, CLECs may interconnect using various forms of collocation. In addition, Mr. Deere states that competing carriers may interconnect at any technically feasible point in SBC Wisconsin's network including the "trunk-side or line side of the local switch, trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs..." (Deere Aff. ¶¶ 23-24)

According to Mr. Deere, SBC Wisconsin makes available four options that allow CLECs to interconnect with SBC Wisconsin's network for the purposes of exchanging traffic. These options include: fiber meet; physical collocation; virtual collocation and leasing of SBC Wisconsin facilities. (*Id.* ¶ 14). Mr. Deere asserts that interconnection is provided to competing carriers in at least the same quality as SBC Wisconsin provides itself because the same facilities, interfaces, technical criteria and service levels are used. (*Id.* ¶ 34)

Mr. Deere describes a fiber meet as a negotiated, mutually agreeable interconnection point between a CLEC's premises and SBC Wisconsin's end office or tandem switch. According to Mr. Deere, while there are four fiber meet designs, all involve the parties jointly engineering and operating a point-to-point system with each party having the necessary fiber optic terminals, multiplexing equipment and fiber to exchange the optical signals from each other.

Mr. Deere describes physical collocation as the physical occupation of CLEC facilities inside SBC Wisconsin offices. According to Mr. Alexander, SBC Wisconsin provides CLECs with access to their physically collocated equipment 24 hours a day, seven days a week without a security escort. (Alexander Aff. ¶ 44) According to Mr. Deere, if a CLEC decides to physically

collocate, it is able to “install, operate, and maintain their equipment within their collocation space.” (Deere Aff. ¶ 25) Mr. Alexander describes the various options of physical collocation including: caged, shared caged, cageless and other arrangements (e.g., adjacent structure collocation). In some instances, where space limitations prevent physical collocation, SBC Wisconsin provides adjacent collocation.

Mr. Alexander describes virtual collocation as a form of collocation where the CLEC furnishes and SBC Wisconsin maintains and repairs the collocated equipment on behalf of the CLEC. (Alexander Aff. ¶ 12). Where space is available, virtual collocation is permitted in controlled environmental vaults, huts and cabinets, and central offices. (Deere Aff. ¶ 27) According to Mr. Alexander, the same engineering, maintenance and repair practices and standards are used for virtually collocated equipment as is used by SBC Wisconsin for its own equipment. (Alexander Aff. ¶ 48-49)

Finally, CLECs may lease DS1 or DS3 special access facilities from SBC Wisconsin.

According to Mr. Alexander, “Ameritech [SBC] Wisconsin has established processes and procedures to ensure that collocation arrangements are available on terms and conditions that are just, reasonable, and nondiscriminatory.” (Alexander Aff. ¶ 14). These processes and procedures include length of time required to process and implement request for collocation; notification of space availability; construction intervals; intervals for multiple collocation requests; security options and requirements; safety standards and requirements; and additional requests for augmentation of an existing collocation arrangement. (*Id.* ¶ 15-21, 34-39 and 40-45)

Mr. Deere also asserts that industry standards are used for traffic engineering methods, forecasting and servicing of interconnection trunk groups to ensure that management of the trunks is the same for CLECs as for SBC Wisconsin's retail operations. (*Id.* ¶ 42-43) CLECs are also required to provide a semi-annual or quarterly detailed trunk forecast which helps SBC Wisconsin manage the amount of traffic to be exchanged between itself and all CLECs. According to Mr. Deere, when one-way trunks are used to deliver traffic, each party is responsible for forecasting, monitoring and servicing their respective trunks. CLECs may also use two-way trunks to exchange traffic with SBC Wisconsin. (*Id.* ¶ 49). In addition, Mr. Deere states that periodic meetings are held between CLECs and SBC Wisconsin to "discuss trunk forecasting, facility shortages, and other topics related to providing adequate trunking in the local network... central office rearrangements and other interconnection subjects requested by the CLECs." (*Id.* ¶ 50)

SBC Wisconsin also asserts that it uses the same engineering practices for, and will maintain and repair, virtually collocated equipment in the same manner as it does for its own equipment.

AT&T's Response to Interconnection Issues

AT&T believes that "SBC Wisconsin's network architecture and related interconnection policies are designed to maximize CLECs' costs, minimize their network efficiencies and prevent them from providing legitimate competitive services" (AT&T Comments p. 15) Mr. Danial Noorani filed an affidavit on behalf of AT&T arguing that SBC Wisconsin's interconnection policy requires AT&T to "adopt its network design to Ameritech [SBC] ... and would shift to AT&T the transport cost that Ameritech is required to lawfully bear under the

Telecommunications Act of 1996.” (Noorani Aff. ¶ 10) Responding to Mr. Deere’s affidavit, Mr. Noorani disagrees with SBC Wisconsin’s position that CLECs must establish a single point of interconnection in SBC Wisconsin’s serving area of the LATA. (*Id.* ¶ 12 emphasis from the original). This policy would require AT&T to have multiple Points of Interconnection (POI) in the LATA to interconnect with multiple service providers and would have the effect of shifting transport costs to CLECs. (*Id.* ¶ 10) AT&T has agreed to establish at least one physical point of interconnection in LATAs where it does not have a switch and AT&T will provide all facilities to both originate and terminate traffic between its switch and POI. (AT&T Comments p. 15-16) According to Mr. Noorani, the FCC concluded that CLECs and not SBC Wisconsin select where interconnection occurs and may select a Single Point of Interconnection (SPOI). (Noorani Aff. ¶ 16).

Mr. Noorani also opposes SBC Wisconsin’s policy of requiring carriers to directly connect with an end office when traffic reaches the level of “1 DS1” to avoid tandem exhaust. Mr. Noorani states that this policy violates AT&T’s right to select the location by which it interconnects with SBC Wisconsin. (*Id.* ¶ 19) Mr. Noorani believes that SBC Wisconsin must demonstrate to a state commission if it refuses to establish an interconnection point due to tandem exhaust. According to Mr. Noorani, proper forecasting and the deployment of additional tandem switching capacity are the correct response to any tandem exhaust issues. Mr. Noorani also states that SBC Wisconsin takes the same position regarding transit traffic whereby AT&T must directly connect with a carrier when the amount of traffic terminating reaches the 1 DS1 level. (*Id.* ¶ 22). Mr. Noorani believes that SBC Wisconsin has a legal obligation to transit traffic to other carriers regardless of the level of traffic being exchanged.

AT&T Response to Collocation Issues

Mr. Noorani states that, “SBC does not provide CLECs access to the Connecting Facility Arrangement (‘CFA’) at parity with the manner in which Ameritech [SBC] may access the CFA ... and discriminates against CLECs in approving vendors for access to the CFA.” (*Id.* ¶ 27; AT&T Comments p. 26) According to Mr. Noorani, AT&T has experienced problems with CFAs, an essential part of loop provisioning, and therefore requires access to the CFA to test the wiring between the collocation space and the MDF to determine the root cause of any CFA problems. Mr. Noorani provided examples of CFA problems encountered by AT&T including: ILEC wiring pattern differences; DSLAM wiring requirements; CFA usage volume; ILEC/CLEC CFA software problems and bad wiring. (*Id.* ¶ 31) Without the ability to test, “The result can be gridlock for orders in a CO where CFA problems occur.” (*Id.* ¶ 30). According to Mr. Noorani, while AT&T “may request an escort ticket to go look at the MDF, ... it is not permitted to conduct tests or touch any of the wiring. (*Id.* ¶ 33) The only way for AT&T to test the wiring between the MDF and the collocation space is by hiring a third party contractor approved by SBC Wisconsin. Mr. Noorani believes there are at least three problems with this policy – delays in service, expense in fixing the problem and control of service. By contrast, AT&T argues that SBC Wisconsin technicians have “full access to COs at all times and can conduct such tests the moment the need arises.” (AT&T Comments p. 27)

Mr. Noorani offers three recommendations for this issue – provide AT&T full and free access to COs as SBC technicians have; provide AT&T limited access to the MDF strictly to conduct testing and; offer an alternative central office configuration (e.g., POT bay). Under this alternative, the CFA would appear on a POT bay which would be located inside the collocation

space, providing AT&T with 24-hour/7 day access to conduct testing. The wiring between the POT bay and the MDF is the responsibility of SBC Wisconsin. (*Id.* ¶ 35)

Finally, in its brief, AT&T states that SBC Wisconsin “has yet to provide TELRIC based rates for the collocation terms and conditions arising out of Docket 6720-TI-161 and the AT&T/Ameritech interconnection agreement. Indeed, Ameritech’s [SBC Wisconsin] ‘compliance’ filing in 6720-TI-161 created literally dozens of new collocation pricing disputes.” (AT&T Brief p. 24).

TDS’ Response to Collocation Issues

Mr. Cox of TDS argues that SBC Wisconsin is undermining the collocation provisioning process by requiring CLECs to use a third party vendor to build out collocation space; “If the collocation space must be turned over in 90 or 180 days, SBC/Ameritech interprets this requirement as turning over the space to the third party vendor for construction to begin.” (Cox Aff. ¶ 29) In addition, Mr. Cox disputes SBC Wisconsin’s policy that the “provisioning interval [is] over when the collocation space has been roughed in and distinctly marked. (*Id.*). Mr. Cox cites one example in Ohio where SBC delayed TDS’ end office integration in Cleveland. (*Id.* ¶ 31)

Mr. Cox also states that SBC Wisconsin does not permit CLECs to have “access to the back of the DMARC on its collocation space to perform maintenance or troubleshooting activities.” (*Id.* ¶ 32) Mr. Cox understood that previously both parties had access to the point of demarcation to test and isolate problems. In fact, Mr. Cox asserts that he has “personal knowledge of instances in which a McLeodUSA technician was permitted access ... to the DMARC.” (*Id.* ¶ 34) Mr. Cox states that as long as a CLEC is escorted to the DMARC area,

which TDS is willing to abide by, SBC Wisconsin should not prohibit a CLEC from accessing the DMARC. (*Id.* ¶ 35) Mr. Cox also disagrees with SBC Wisconsin's requirement that third party vendors be used to perform this work. In this regard, Mr. Cox, asserts that SBC Wisconsin has created artificial barriers preventing a CLEC from becoming a certified third party vendor because all third party vendors must be willing to bid on SBC Wisconsin's internal work. According to Mr. Cox, no CLEC is staffed to perform this work for SBC Wisconsin. (*Id.* ¶ 38-39)

Norlight's Comments

Through the affidavit filed by Mr. Thomas E. Havas, Norlight states that it encountered "unreasonable barriers and delays" in migrating traffic from mid-span meets (OC-12 and OC-48 optical line terminations) to collocation arrangements. (Havas Aff. ¶ 5-6). Norlight states that SBC Wisconsin will not migrate the circuits in bulk but rather its policy is to migrate only five circuits per night; a process that would take six months to migrate all circuits from the OC-48 facility. (*Id.* ¶ 9) Norlight further states that it migrates the circuits at the end of the meet point payment plan which are five-year term periods. However, given that the migration process will take significantly longer than expected, Norlight is forced to convert to a higher month-to-month pricing schedule pending the completion of the migrations. This results in a 60% increase in monthly recurring charges. (*Id.* ¶ 10). Norlight argues that SBC Wisconsin's policy is discriminatory because SBC Wisconsin could migrate these circuits in as little as 10 days for its retail operations. (*Id.* ¶ 11)

Norlight filed comments regarding SBC Wisconsin's process for collocation services asserting that it has "encountered an unduly burdensome, complex, and at times, arbitrary and

negligent SBC process ... [including] ... frequent and untimely changes of Ameritech personnel assigned to Norlight negotiation and account management.” (Norlight Comments p. 3) Norlight also states that SBC personnel are not prepared and/or unable to answer or resolve basic operational and provisioning questions which delays the process. Norlight also states that SBC Wisconsin has made multiple changes to its collocation application form and SBC Wisconsin failed to notify Norlight of these changes or failed to adequately explain them, thus causing delays in the proper completion of the form. Finally, Norlight states that with regard to collocation bills, it has “been forced to endure long delays in billing for final, non-recurring charges, as well as the start of monthly recurring charges” causing Norlight to “establish and maintain accruals for potential liabilities, and generally leads to billing disputes covering extended periods.” (*Id.* p. 4)

McLeod

Ms. Joy Heitland filed an affidavit on behalf of McLeodUSA and stated that SBC Wisconsin’s lead interconnection negotiator was not familiar with McLeod’s resale contract which caused delays in finalizing its contract and various amendments. (Heitland Aff. ¶ 3-4) In addition, Ms. Heitland asserts that SBC Wisconsin changed positions during negotiations due to, “a change in the lead negotiator, a change in subject matter expert (SME), and a change in internal SBC/Ameritech processing procedures.” (*Id.* ¶ 5) Ms. Heitland also asserts that SBC Wisconsin’s lead negotiator has little or no authority to close issues (e.g., operational, policy or legal) without conferring with other SBC employees. (*Id.* ¶ 6) Also, because SBC Wisconsin subject matter experts (SMEs) are not involved with the actual negotiations, the negotiation

process “is very drawn out and inefficient because the SBC/Ameritech negotiator must shuttle positions back and forth.” (*Id.* ¶ 7)

Finally, Ms. Heitland asserts that SBC Wisconsin does not have adequate contract management processes to ensure that the final interconnection document contains all negotiated, agreed upon language. According to Ms. Heitland, its recent experience with SBC Illinois resulted in: 32 instances where SBC struck previously agreed-to language; 71 instances where SBC deleted language, but did not indicate that the language was deleted; 42 instances where SBC replaced language (some previously negotiated) and had not informed McLeod; 10 instances where SBC included replacement language that had not previously been offered to McLeod prior to an arbitration filing and 13 instances where SBC had inserted new language that had never been provided to McLeod and without indication that it was new text. (*Id.* ¶ 9)

TDS Metrocom

Mr. Cox filed an affidavit on behalf of TDS Metrocom asserting problems with SBC Wisconsin’s interconnection negotiations. Specifically, Mr. Cox asserts that SBC Wisconsin’s wholesale negotiations are conducted with input from retail product management. Mr. Cox also states that SBC Wisconsin continues to arbitrate issues that had been lost in other states, causing delays and additional expenses to CLECs. Finally, Mr. Cox asserts that SBC Wisconsin changes its lead negotiator, SME or company policy during negotiations and that SBC Wisconsin’s negotiators have little authority to deviate from the standard 13-State contract. (Cox Aff. ¶ 14-17)

Time Warner Communications comments of Nov 15, 2001

Time Warner Communications (TWC) filed an affidavit by Ms. Pamela H. Sherwood. According to Ms. Sherwood, TWC has had difficulty in obtaining a replacement contract because SBC has had three different lead negotiators, two different attorneys and two different SMEs. (Sherwood ¶ 7) In addition, Ms. Sherwood asserts that when SBC Wisconsin changed members of its negotiating team, they would re-open issues that were previously closed “forcing TWC to re-explain their positions and renegotiate over issues that had taken months to resolve.” (*Id.*) Ms. Sherwood also states that SBC Wisconsin would not allow TWC to use provisions resolved in another CLEC’s arbitration, thereby requiring TWC to re-arbitrate those issues. (*Id.* ¶ 9) In addition, Ms. Sherwood stated that even after the contract was signed, it took SBC Wisconsin a significant amount of time to file and implement the contract which delayed TWC’s ability to order products and services. (*Id.* ¶ 11) Ms. Sherwood recommends that performance measures and remedies be adopted to measure SBC Wisconsin’s ability to timely negotiate and execute interconnection contracts and amendments.

WCOM

In its November 15, 2002 submission, WCOM cites examples of SBC’s inappropriate negotiation policy and believes that these examples will come to Wisconsin when WCOM and SBC Wisconsin renegotiate their contract next year. Specifically, WCOM states that SBC refused to negotiate the terms and conditions for CNAM download even after the Michigan Commission ordered that it be made available to WCOM. In Illinois, WCOM asserts that SBC stated that other carriers could not opt-into the SBC/TDS remedy plan amendment provision because it was not a complete agreement. (WCOM Comments p. 14)

SBC Wisconsin's Response

In response to AT&T's response to SBC Wisconsin's interconnection policies, Mr. Deere disagrees with Mr. Noorani that SBC Wisconsin does not allow for single point of interconnection (SPOI.) Mr. Deere cites section 3.2.5 of a new interconnection agreement between AT&T and SBC Wisconsin that states that AT&T may interconnect with only a SPOI:

At least one POI must be established within the LATA where SBC Wisconsin operates as an incumbent LEC and AT&T has a switch and end Users in that LATA.
(Deere Reply Aff. ¶ 5).

Mr. Deere states that SBC Wisconsin's position has consistently been found compliant by the FCC for 271 purposes. (*Id.* ¶ 8-11) Mr. Deere also states that during the AT&T/SBC Wisconsin arbitration (Docket 05-MA-120), the Panel sided with SBC Wisconsin and concluded that AT&T should pay for trunking.

Mr. Deere also believes that, contrary to FCC rules, AT&T is seeking interconnection "outside" SBC Wisconsin's service area and therefore outside its network. (*Id.* ¶ 16).

Mr. Deere asserts that SBC Wisconsin's policy regarding direct trunking to an end office when one DS1 level of traffic is reached is based on "good engineering practice" and is a policy followed with SBC Wisconsin's own network architecture. (*Id.* ¶ 22) According to SBC Wisconsin, this policy does not discriminate against CLECs. While SBC Wisconsin requires CLECs to establish direct trunking when traffic reaches a 24-trunk level, SBC Wisconsin "uses a more demanding threshold (17 trunks) for establishing direct trunks in its own network." (SBC Wisconsin Comments p. 7) As with the SPOI issue, Mr. Deere cites the interconnection agreement between AT&T and SBC Wisconsin that clearly states that new direct trunk groups are required when traffic reaches a predetermined threshold. (Deere Reply Aff. ¶ 32). Mr. Deere

also cites BellSouth's 271 applications for Georgia and Louisiana where a similar provision existed. Mr. Deere also believes the same principles apply to interconnection with third party carriers.

Mr. Alexander responded to the allegations presented by Mr. Cox regarding SBC Wisconsin's collocation policies, including the use of third party vendors to complete cabling and power cable placement. Mr. Alexander cited section 4.3 of the Appendix Collocation of TDS' interconnection agreement with SBC Wisconsin which contains this exact provision. According to Mr. Alexander, TDS is bound by its effective agreement with SBC Wisconsin. (Alexander Reply Aff. ¶ 12). In response to Mr. Cox's argument regarding the provisioning interval, Mr. Alexander states that, "As a general practice, Ameritech [SBC] Wisconsin turns over collocation space as soon as it completes its work (including all COBO work), and generally no later than the due date. In addition, in many instances, the CLEC's vendor can begin its work (i.e., cabling, but not equipment installation that requires occupancy of the space) in parallel with Ameritech's work." (*Id.* ¶ 14).

In response to Mr. Cox's argument regarding access to the DMARC, Mr. Alexander states that "the MDF is the heart" of SBC Wisconsin's network because every customer line, trunk and circuit terminates at the MDF. Therefore, "direct access to the MDF by anyone other than the ILEC and its approved vendors places the security of the entire network at risk." (*Id.* ¶ 17) He also states that FCC rules and regulations do not require ILECs to provide this type of access to CLECs. In addition, Mr. Alexander states that SBC Wisconsin's collocation tariff expressly prohibits this type of access. (*Id.* ¶ 16 citing P.S.C. of W. Tariff No. 20, Part 23, Section 4, Sheet No. 2.2). Mr. Alexander cites section 4.6 of the collocation appendix of the

TDS/SBC Wisconsin interconnection agreement which “clearly prohibits TDS’ technicians from accessing or working on Ameritech [SBC] Wisconsin’s MDF.” (*Id.* ¶ 18)

In response to AT&T’s issue with obtaining direct access to SBC Wisconsin’s MDF to resolve CFA problems, Mr. Alexander agrees that CFA problems diminish with proper and accurate cable installation and SBC Wisconsin provides CLECs with a report that verifies the accuracy of its CFA records and inventory. In addition, Mr. Alexander also states that SBC Wisconsin has been working with CLECs on this issue and in May 2002, SBC Wisconsin introduced a “streamlined process” to respond to CLEC-requested CFA changes. This allows CLECs to make CFA changes on an expedited basis without entering the central office or hiring an approved vendor to perform the work. (Alexander Reply Aff. ¶ 24) In addition, some testing and CFA verification is performed by the CLEC’s approved vendor before the CFAs are used for actual service (*Id.* ¶ 26) Mr. Alexander states that if testing is necessary to reduce the number of problems, a better approach would be for AT&T and SBC Wisconsin develop a “planned, coordinated basis using an approved third-party vendor.” (*Id.*) Finally, in response to Mr. Noorani’s recommendation for a POT bay, Mr. Alexander states that such an option is available to CLECs and cites various sections of the TDS agreement where this option is available. (*Id.* ¶ 27).

Mr. Alexander also disagrees with both Messrs. Cox and Noorani that use of third party vendors is problematic because vendors “can obtain ready access to Ameritech [SBC] Wisconsin’s central office to resolve such problems quickly.” (*Id.* ¶ 20). Finally, Mr. Alexander disputes Mr. Cox’s assertion that CLECs are unable to become third party vendors. According

to Mr. Alexander, any CLEC may become a vendor may do so on the same basis as any other qualified vendor.

In response to CLEC issues regarding SBC Wisconsin's negotiation policies and practices, SBC Wisconsin filed an affidavit by Ms. Marilyn Williams. Ms. Williams states that SBC Wisconsin has changed its negotiation process so that the negotiating team does more preliminary analysis and is therefore more aware of unique CLEC issues. This occurred after the McLeod negotiations. (Williams Reply Aff. ¶ 4) In response to allegations regarding the delays in the negotiation process, Ms. Williams asserts that these negotiations involve complex issues and therefore "it is not possible for [CLEC] negotiators to affirmatively respond, on-the-spot, to each and every technical, policy, operational or legal issue." (*Id.* ¶ 5) Negotiators must have the opportunity to seek input from various company SMEs before responding to CLEC issues.

Ms. Williams acknowledges that SBC Wisconsin had a "breakdown in document revision control" during its contract negotiations with McLeod and SBC Wisconsin "has implemented processes to ensure that negotiators transmit correct documents to the Contract Management Team for the ultimate production of signature ready documents." (*Id.* ¶ 14)

In response to Norlight's assertion that its collocation and account manager change frequently, Ms. Williams states that SBC Wisconsin's current collocation and account managers for the Norlight account have been in place since December 2000 and May 2001 respectfully. In response to Norlight's assertion that collocation forms change without notification to CLECs, Ms. Williams states that all changes are communicated to CLECs via Accessible Letters. Ms. Williams acknowledges that Norlight has experienced billing errors and states that SBC Wisconsin is committed to working with Norlight to resolve these issues.

In response to Mr. Cox's assertions, SBC Wisconsin filed an affidavit by Mr. Scott Alexander stating that "provisions that have been arbitrated in one state are not available under Section 252(i) for 'adoption' by carriers in a different state." (Alexander Reply Aff. ¶ 4) Regarding Mr. Cox's assertion regarding input from SBC Wisconsin's retail operations during negotiations, Mr. Alexander states that because Mr. Cox provides no examples to support his position, "These claims are simply unsupported conjecture and are without merit." (*Id.* ¶ 6)

TDS, McLeod and NTD's December 5, 2002 Filing

In addition to issues identified above, these parties assert that interconnection contracts are not the "exclusive manner through which CLECs may exercise their rights to obtain services from SBC/Ameritech." (Comments p. 14) CLECs should be allowed to order interconnection and wholesale services out of SBC Wisconsin's tariffs if there is no prohibition for this in a carrier's interconnection contract. (*Id.*)

SBC Wisconsin's December 5, 2002 Filing

In response to AT&T's statement that SBC Wisconsin's policy requiring direct trunking to an end office when traffic reaches a predetermined level violates AT&T's right to determine the point of interconnection, SBC Wisconsin states that, "Direct trunking does not alter an existing point of interconnection or establish a new point of interconnection. The physical point of interconnection between AT&T's and Ameritech [SBC] Wisconsin's network remains at the original point selected by AT&T when direct trunking is established." (SBC Wisconsin Comments ¶ 29)

With respect to the fourth disputed issue under interconnection, SBC Wisconsin argues that, "no party has identified any legal basis for imposing obligations upon Ameritech [SBC]

Wisconsin when negotiating interconnection agreements other than those under sections 251 and 251...” (*Id.* ¶ 32) SBC Wisconsin also argues that a 271 proceeding involves determining SBC Wisconsin’s compliance with existing federal laws and rules and should not be used to impose new obligations. (*Id.* ¶ 33)

With respect to the fifth disputed issue under interconnection involving SBC Wisconsin’s legal obligation to negotiate in good faith, SBC Wisconsin argues that, “there is no evidence of any systemic problems with Ameritech’s contract production procedures.” (*Id.* ¶ 38). SBC Wisconsin also argues that CLEC experiences in Illinois and Ohio are not relevant to Wisconsin’s 271 proceeding. Also, SBC Wisconsin asserts that in the fall of 2001, it implemented improved processes for both negotiating and document production. (*Id.* ¶ 38 – 39)

With respect to the sixth disputed issue under interconnection, SBC Wisconsin states that a recent court decision held that state tariffs are inconsistent with the interconnection agreement process outlined in the 1996 Act and therefore prohibits CLECs from obtaining wholesale products and services from a tariff if they have a binding interconnection contract. (*Id.* ¶ 43 citing *Wisconsin Bell, Inc. V. Bie*, No. 01-C-0690-C, Sept, 26, 2002)

WCOM’s December 15, 2002 Filing

WCOM challenges SBC Wisconsin assertion that this 271 application should only review SBC Wisconsin’s compliance with federal laws and rules. Citing the FCC’s Michigan order, WCOM states that SBC Wisconsin’s compliance with both federal and state regulations should be considered. (WCOM Reply Comments p. 10) WCOM also disagrees with SBC Wisconsin’s position that “experiences from other Ameritech states are irrelevant here.” (*Id.*) According to WCOM, SBC Wisconsin freely uses those decisions and processes from other SBC states “when

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it is advantageous to do so.’ (*Id.* p. 11) Citing the line-loss issue, SBC’s win-back program and rate increases, WCOM states that, “The reality of the situation is that what happens in one Ameritech [SBC] state often happens in the others.” (*Id.*) And, “Ameritech [SBC] Wisconsin cannot have it both ways: either this proceeding is wholly independent of what is going on elsewhere, or it is not.” (*Id.*)

SBC Wisconsin’s December 15, 2002 Filing

In response to AT&T’s concern with direct trunking, SBC Wisconsin states that, “AT&T’s interconnection agreement with Ameritech [SBC] Wisconsin requires direct trunking. Feb. 27, 2001 Additional Arbitration Award, Docket No. 05-MA-120, at 7-8.” (SBC Wisconsin Reply Comments p. 7)

In response to CLEC allegations of bad faith negotiations, SBC Wisconsin states that CLECs are free to terminate negotiations within the statutory timelines and proceed with arbitration or they may seek the intervention of the Commission to mediate under section 252(a)(2). (*Id.* p. 10)

In response to the argument that CLECs may purchase wholesale services under either the tariff or interconnection agreement, SBC Wisconsin states that, “unfettered use of the tariffs is inconsistent with the Commission’s Final Decision in Docket 6720-TI-161, which limited use of wholesale tariffs to the time beginning with a request for an interconnection agreement and ending with approval of a final agreement.” (*Id.* p. 10)

5. Commission Recommendation

With limited exceptions and subject to the outcome of Phase II, the Commission tentatively concludes that SBC Wisconsin has complies with 47 U.S.C. § 271(c)(2)(B)(i). As

discussed below, those exceptions do not rise to the level of noncompliance, and several of them are more appropriately addressed in other venues

SBC Wisconsin must develop procedures to permit Norlight to migrate its circuits from meet-span to collocation arrangements within 10 days. While this evidence was undisputed and constitutes discrimination, at this time it is not sufficient to determine that SBC Wisconsin has not complied with this checklist item. If Norlight is not satisfied with SBC Wisconsin's response to resolve this matter the Commission could consider the matter in Phase II of this proceeding.

The Commission's conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting three months of performance data.

Disputed Issues

Interconnection

- Can CLECs be required to interconnect directly with Ameritech's end offices and offices of other carriers when traffic reaches a predetermined level?
- If so, which party should bear the cost?
- Should CLECs be allowed to determine the point of interconnection between their network and Ameritech's network?

As a threshold matter, SBC Wisconsin has legally binding obligation to directly trunk to an end office and/or another carrier, based on each CLEC's interconnection agreement.

However, the direct trunking requirement does not alter the CLECs' ability to choose or modify its interconnection point. Requiring direct interconnection to end offices when a CLEC's traffic reaches a certain predetermined level is consistent with sound network engineering principles and consistent with interconnection obligations under the Act, including holding the CLEC fiscally responsible for the trunking.

Further, the FCC has approved other 271 applications with such requirements, which demonstrates that the FCC did not believe the requirements were inconsistent with checklist compliance.

If the threshold established by SBC Wisconsin for requiring direct trunking were more stringent for the CLECs than for its own network, there could be an argument that such discriminatory treatment inflates the costs for competitors over the costs for its own operations. In this instance, however, SBC Wisconsin follows a more stringent threshold when managing its own network.

- In addition to its obligations under sections 251 and 252, are there other obligations upon SBC Wisconsin when negotiating interconnection agreements?
- Are the parties complying with their legal obligations to negotiate in good faith?

It is not clear what other legal obligation for interconnection could be tied to 271 approval under this checklist item and no such obligations were identified by the parties.

The Commission agrees that CLECs have identified problems negotiating interconnection contracts with SBC Wisconsin. These problems are not challenged by SBC Wisconsin. However, there are standards set for determining when bargaining is legally in bad faith and significant findings must be made to establish the validity of such a claim. Simply being displeased with the direction of or progress in a negotiation is not sufficient to establish that the other party is bargaining in bad faith. CLECs must notify the Commission when problems in negotiation occur and can file for mediation or arbitration to resolve issues that are unresolved due to any alleged bad faith negotiations. The Commission has no remedy for after-the-fact allegations of bad faith negotiations and such after-the-fact allegations are not a sufficient basis for a conclusion of noncompliance with this checklist item.

It is also true that in the six month performance measure review process, parties may request new or revised performance measures from SBC Wisconsin, including new measures to address progress under negotiations and document management. It is not appropriate to consider establishing such metrics outside the established processes – namely in this docket.

No carrier has asserted that SBC Wisconsin failed to obtain a contract due to bad faith negotiations, and therefore SBC Wisconsin complies with the checklist with regard to this matter.

- Can SBC Wisconsin prevent a CLEC with an interconnection agreement from ordering interconnection or wholesale services out of an SBC Wisconsin tariff that has the same or similar services if there is nothing in the interconnection agreement that expressly prevents a CLEC from doing so?

At this time, because of the decision in western district federal court⁵, the Commission will not require SBC Wisconsin to offer CLECs the option of buying services out of a tariff when they have a legally binding interconnection agreement. The decision has been appealed and the Commission reserves the right to modify this position based on future appellate court decisions.

Collocation

- Do CLECs have the right to access the demarcation point and/or associated cabling and terminal blocks, including those on SBC Wisconsin's MDF (or IDF) if the demarc point is located outside the CLEC's collocation cage?

The Commission agrees with SBC Wisconsin that security concerns arise by allowing parties access to the MDF, an assertion that was not challenged by the CLECs. The CLECs argue that limiting such access is unequal and discriminatory, yet they do not provide any citations to orders or court decisions that support their positions. SBC Wisconsin on the other

⁵ *Wisconsin Bell, Inc. v. Bie*, No. 01-C-0690-C, slip op. (W.D. Wis., Sept. 26, 2002)

hand offered citations which prohibit access to the MDF (e.g. collocation tariff and TDS' interconnection agreement). As a threshold issue, some CLECs (e.g., TDS) have legally binding obligations, as part of their interconnection contract, prohibiting direct access to the MDF. In addition, the TDS contract contains the option for a POT bay, an alternative solution proposed by AT&T. If these contractual provisions are insufficient, parties should negotiate other alternative approaches for accessing the MDF or seek arbitration before the Commission.

- Regarding collocation provisioning intervals – is there is any prohibition against coordinating activities between SBC Wisconsin's build out activities and CLEC vendor's cabling work?

The Commission believes that there is no prohibition against coordinating the activities of SBC Wisconsin's build out of collocation space and a CLEC's cabling activities. The filing of amendments to existing interconnection agreements should be sufficient to remedy the situation identified by TDS Metrocom. For that reason this matter is a not a consideration for 271 compliance. Finally, the Commission agrees with SBC Wisconsin that TDS is legally bound by its interconnection agreement to use third party vendors to complete cabling and power placement.

Checklist Item 2 – Unbundled Network Elements

1. Statutory Requirement

Sec 271(c)(2)(B)(i) of the Act requires the applicant to provide “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

Section 251(c)(3) imposes an obligation on incumbent local exchange carriers to provide unbundled access. Specifically, this section imposes a duty, “to provide, to any requesting

telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.”

Section 252(d)(1) describes the pricing standard applicable to interconnection and network elements. “Determinations by a State commission of the just and reasonable rate for ... network elements for purposes of subsection (c)(3) [of section 251] –

(A) shall be --

- (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable) and
- (ii) nondiscriminatory, and

(B) may include a reasonable profit.

2. FCC Discussion Regarding Compliance

A. Access to Operational Support Systems (OSS)

The FCC has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. If a CLEC is denied nondiscriminatory access to a ILEC’s OSS, it “will be severely disadvantaged, if not precluded altogether, from fairly competing” in the local exchange market. (VA, App. C, ¶ 25) The FCC has determined that

nondiscriminatory access to OSS falls within the ILEC's duty under both section 251(c)(3) and section 251(c)(4) as well as other terms of the competitive checklist.

In order to make a finding of nondiscriminatory access, the FCC evaluates the ILEC's OSS performance. "For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness. The BOC must provide access that permits competing carriers to perform these functions in 'substantially the same time and manner' as the BOC." (VA, App. C, ¶ 27) "For OSS functions that have no retail analogue, the BOC must offer access 'sufficient to allow an efficient competitor a meaningful opportunity to compete.'" (VA, App. C, ¶ 28) In making this determination, the FCC will determine if the BOC has standards to measure various aspects of its OSS. If the RBOC has an approved set of performance measures, the FCC will evaluate the results to determine if a carrier has a meaningful opportunity to compete.

The FCC uses a two-step process to analyze whether a BOC has satisfied the nondiscrimination standard. "First, the Commission determines 'whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carrier to understand how to implement and use all of the OSS functions available to them.'" (VA, App. C, ¶ 29) In regard to the first prong, the BOC must demonstrate that it has developed sufficient electronic and manual interfaces, including the disclosure of any internal business rules and other formatting information necessary for the CLEC to properly submit inquiries and orders. The BOC must also

demonstrate that its OSS is designed to accommodate both current and projected CLEC demand.

(VA, App. C, ¶ 30)

For the second prong, the BOC must demonstrate that its OSS is commercially ready at both current and future volumes. According to the FCC, the most probative evidence of commercial readiness is actual commercial usage by competing carriers. If actual commercial experience is not available, the BOC may use the results of “carrier-to-carrier testing, independent third-party testing, and internal testing.” (VA, App. C, ¶ 31) According to the FCC, “to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations. Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.” (VA, App. C)

In making its evidentiary showing, the BOC must submit evidence relating to all aspects of its OSS.

- **Pre-Ordering** – for this function, the BOC must demonstrate that it offers (i) “nondiscriminatory access functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces; and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.” (VA, App. C, ¶ 33)

- (i) **Access to Loop Qualification Information** – the FCC has determined that the BOC must “provide competitors with the same detailed information about the

loop that is available to the incumbents, and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting advanced services.” (VA, App. C, ¶ 35) In providing this information, the BOC must not ‘filter or digest’ the information and must provide it at the same level that it provides to itself (e.g., individual address or zip code of end users in a particular wire center or NXX code).

- **Ordering** – the BOC must provide evidence demonstrating its ability to allow CLECs to place wholesale orders. The FCC looks at the timeliness and accuracy of BOC responses including: “return order confirmation notices; order reject notices; order completion notices; jeopardies and; its flow-through rate. (VA, App. C, ¶ 37)
- **Provisioning** – the BOC must demonstrate that it provisions CLEC orders “in substantially the same time and manner as it provisions orders for its own retail customers.” (VA, App. C, ¶ 38)
- **Maintenance and Repair** – the BOC must provide evidence that it provides competing carriers nondiscriminatory access to its maintenance and repair systems. This includes providing CLECs with access to the “same network information and diagnostic tools” used by the RBOC’s retail operations to assist customers with service disruptions. (VA, App. C, ¶ 38)
- **Billing** – the BOC must demonstrate that it provides nondiscriminatory access to its billing processes and systems to allow CLECs the ability “to provide accurate and timely bills to their customers.” (VA, App. C, ¶ 39)
- **Change Management Process** – the BOC must demonstrate that it has an “adequate change management process and evidence that the BOC has adhered to this process over time.” (VA, App. C, ¶ 40) This includes providing CLECs with “adequate testing opportunities and accurate and timely notice and documentation of the changes.” (VA, App. C, ¶ 41).

B. UNE Combinations

In past orders, the FCC has clearly stated that CLECs should not only have access to unbundled network elements but also combinations of unbundled network elements.

Combinations of network elements allow competing carriers to ability to “package and market services in ways that differ from the RBOC’s existing service offerings.” (VA, App. C, ¶ 44)

Because combinations are a statutory requirement under section 271, the FCC examines the BOC’s compliance with the statutory requirements and FCC rules which allow the CLECs to combine network elements.

C. Pricing of Network Elements

In order to demonstrate compliance with this aspect of Checklist Item 2, the BOC must demonstrate that its prices for UNEs are based on the “total element long run incremental cost (TELRIC) of providing those elements.” (VA, App. C, ¶ 45) The FCC has states that. “it will not conduct a de novo review of a state’s pricing determinations and will reject an application only if ‘basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce’.” (VA, App. C, footnote omitted)

3. Disputed Issues

- Does SBC Wisconsin’s new UNE-P AND EEL combinations tariff comply with state and federal law?
- Are the process and timeframes in SBC Wisconsin’s BFR-OC process reasonable and appropriate?
- Should the offerings in SBC Wisconsin’s UNE combination tariff only be available to telecommunications carriers with an effective interconnection agreement dated before September 25, 2001?
- Should SBC Wisconsin be required to offer a UNE combination interconnection agreement amendment that offers UNE combinations on the same terms as provided in SBC’s UNE combination tariff?
- Should the standard UNE combination offerings in SBC’s UNE combination tariff include UNE combinations that specifically include high capacity loops (DS3/fiber), dark fiber loops, and dark fiber transport?
- Do SBC Wisconsin’s OSS reflect whether particular network elements are currently combined in its network? If not, should SBC Wisconsin be required to develop OSS that reflects whether particular network elements are currently combined in its network?
- Must competitors be able to purchase tariffed UNE combinations regardless of whether or not their interconnection agreements cover such UNE combinations?
- Does the PSCW have the authority to prohibit SBC Wisconsin from withdrawing its UNE combinations tariff regardless of the outcome of the pending federal appeal of the OSS Order in 6720-TI-160?
- If so, should SBC Wisconsin be prohibited from withdrawing its UNE combinations tariff?

- What impact do SBC Wisconsin's September 10th Comments in 6720-TI-161 have on this proceeding?
- SBC Wisconsin was to provide an answer on whether it will agree combine the elements of UNE-P and the international call blocking feature, assuming that this feature is already loaded into the particular switch.

4. Positions of the Parties

SBC Wisconsin

Access to Operational Support Systems: SBC Wisconsin states that in March 2001, it began a series of OSS upgrades beginning with the implementation of version 4 of the Local Service Ordering Guidelines (LSOG 4). SBC Wisconsin states that these upgrades were done with input from CLECs and regulatory agencies including the FCC, the PSCW and other state commissions in the SBC Wisconsin territory during various collaborative and prehearing proceedings. These upgrades were detailed in the written agreements known as the Uniform and Enhanced Plan of Record (POR) that was filed with the FCC as well as various Joint Progress reports filed and approved by this Commission in Docket 6720-TI-160. According to SBC Wisconsin, these agreements are binding on the company. (SBC Wisconsin Brief, p. 22)

Pre-Order: According to SBC Wisconsin, it offers competing carriers a variety of interfaces that are used by CLECs to access pre-order information. SBC Wisconsin states that these interfaces enable competing carriers to access the "same information from the same sources that SBC Wisconsin's retail operations use" in addition to other information that is not available to retail representatives. (SBC Wisconsin Brief, p. 24) SBC Wisconsin states that it offers competing carriers two types of electronic interfaces – EDI and CORBA. According to SBC Wisconsin, these are application-to-application interfaces, built to industry standards that allow CLEC's and SBC Wisconsin's electronic systems to communicate with each other.

SBC Wisconsin's other interface is a Graphical User Interface (GUI) called Enhanced Verigate. Enhanced Verigate "accepts commands from CLEC representatives working on computer screens, just like well-known personal computer programs do." (SBC Wisconsin Brief p. 24) According to SBC Wisconsin, the GUI provides access to the same information that EDI/CORBA provide. SBC Wisconsin asserts that over 50 CLECs use Enhanced Verigate.

According to SBC Wisconsin, "Both pre-order interfaces allow requesting carriers access to the same information and functions available to Ameritech [SBC] Wisconsin's retail representatives." (SBC Wisconsin Brief, p. 25)

Finally, SBC Wisconsin state that it has implemented a variety of performance measures that measure the response times and availability for each interface. These measures were designed with CLEC input and approved by this Commission in 6720-TI-160. (SBC Wisconsin Brief, p. 26)

Ordering SBC Wisconsin asserts that competing carriers may place orders using two different interfaces or via a manual process. The first interface is an application-to-application interface based on EDI, which can be integrated with the pre-order EDI or used on a stand-alone basis. Beginning in March 2001, SBC Wisconsin began using version 4 of the LSOG. In April 2002, the LSOG was upgraded to version 5. (SBC Wisconsin Brief, p. 27)

The second interface is a GUI and is called Enhanced Local Exchange (Enhanced LEX). Competing carriers use a commercial internet web browser to access Enhanced LEX. Finally, SBC Wisconsin states that carriers may also submit orders manually using a facsimile to the Local Service Center (LSC). (SBC Wisconsin Brief p. 27)

SBC Wisconsin also states that its interfaces are designed to allow competing carriers to integrate pre-order information with the ordering process as directed by the FCC. SBC Wisconsin also states that it modified EDI/CORBA twice to add additional functionality. The first modification was at the request of Worldcom and it provides customer address information in a “parsed” format (i.e., divided into individual data fields) that corresponds to the order form. The second modification synchronizes line data characteristics of fields common to both interfaces. (SBC Wisconsin Brief, p. 25-26)

After an order is received, SBC Wisconsin states that its OSS conduct a series of edit checks to review the order format and content. Based on this systems check, various notifiers are sent back to the CLEC and are described below.

- **Rejections** – According to SBC Wisconsin any order that is “incomplete, inaccurate or improperly formatted” is returned to the requesting CLEC, along with the reason for the rejection to allow the CLEC to correct and resubmit the order. SBC Wisconsin has implemented a series of performance measures that are designed to measure reject timeliness. (SBC Wisconsin Brief, p. 28)
- **Firm Order Confirmations** – SBC Wisconsin asserts that a Firm Order Confirmation (FOC) is sent to the CLEC after receipt of a valid order. The FOC tells the requesting carrier that a valid order was received and will be processed. Like rejections, SBC Wisconsin has implemented a series of performance measures that are designed to measure FOC timeliness. (SBC Wisconsin Brief, p. 29)
- **Jeopardy Notices** – SBC Wisconsin states that a jeopardy notice is sent to the CLEC if SBC Wisconsin encounters a scheduling conflict such that it might miss the due date

for installation. According to SBC Wisconsin, jeopardy notices do not mean that the due date will be missed, only that it might be missed. Performance measures have been implemented to measure the timeliness of jeopardy notices. (SBC Wisconsin Brief, p. 29)

- **Completion Notices** – After the physical work of installing the service is complete and the order is registered as completed in SBC Wisconsin’s ordering and provisioning systems, a completion notice is sent to the CLEC indicated to the CLEC that the service is now operational. Performance measures have been implemented to measure the timeliness of completion notices. (SBC Wisconsin Brief, p. 30)
- **Status Inquiries** – SBC Wisconsin states that it offers Status Inquiries in addition to the aforementioned Notices. Status inquiries allow CLECs to check on the status of their orders at anytime. Some inquiries allow the CLEC to check Pending Order Status “(which depicts the processing of the order, e.g., whether it has been confirmed and whether it has flowed into the downstream systems) and as to Provisioning Order Status (which depicts the activities involved in filling the order, e.g., whether field work is necessary, whether a technician has been assigned, or whether field work is complete.)” (SBC Wisconsin Brief, p. 30)
- **Flow-Through** – SBC Wisconsin states that some order types are designed to flow-through its systems. Flow-through orders are submitted by the CLECs, translated into an internal SBC Wisconsin service order and sent to downstream systems for processing all without manual intervention. The more complex orders do not flow-through and are sent to the LSC where a service representative will type the CLEC

order directly into the downstream systems. SBC Wisconsin asserts that it has implemented enhancements to improve flow-through for DSL and line sharing orders. SBC Wisconsin states that it works with CLECs to prioritize additional enhancements to improve flow-through for CLEC-specified product types. (SBC Wisconsin Brief, pp. 31-33)

Provisioning: According to SBC Wisconsin, a series of performance measures have been designed to ensure timely and accurate provisioning of carrier orders. Many measures report by product type, customer type (residential or business), geographic area and whether a dispatch is required. (SBC Wisconsin Brief, pp. 33-34)

Repair and Maintenance: SBC Wisconsin states that there are three methods for CLECs to report troubles and request maintenance. Two methods involve electronic interfaces - Electronic Bonding and Trouble Administration (EBTA) and the EBTA GUI. CLECs may also contact the Local Service Operations (LOC) where a service technician will input the CLECs request into SBC Wisconsin's systems. According to SBC Wisconsin, the EBTA GUI allows CLECs to perform the same functions that retail operations perform including: issuing trouble tickets; conduct a mechanized loop test; determine the status of a previous trouble report; view a list of open trouble reports and; view a list of reports closed within the last 30 days. SBC Wisconsin also states that a series of performance measures have been implemented to monitor SBC Wisconsin's timeliness and quality of repair work. (SBC Wisconsin Brief, pp. 34-35)

Billing: SBC Wisconsin states that it has a single, region-wide billing system to process usage data for retail, resale and UNE-P customers. According to SBC Wisconsin, this system provides CLECs with the necessary data to allow them to bill their end user customers and other

carriers. Competing carriers may receive their usage data either by magnetic tape or electronically. SBC Wisconsin asserts that monthly bills to CLECs are subject to quality control and testing procedures by sampling items on the bill to ensure that the proper rate was applied to each product or service. SBC Wisconsin states that they have implemented a series of performance measures designed to measure the timeliness and accuracy of SBC Wisconsin bills to CLECs. (SBC Wisconsin Brief, pp. 35-36)

Training, Carrier Assistance, and Help Desk Support

- **Account Management** – According to SBC Wisconsin, every CLEC is assigned an account manager which assists the CLEC in all aspects of its relationship with SBC Wisconsin including, assisting in start-up activities, negotiating an interconnection contract, and providing the necessary tools to use SBC Wisconsin's OSS. After the CLEC has begun operations, the account manager serves as the CLECs point of contact with SBC Wisconsin. In this capacity, the account manager will assist the CLEC with questions and problems. As a result of the Wisconsin prehearings, SBC Wisconsin enhanced the training, guidelines and responsibilities of its account managers. (SBC Wisconsin Brief, pp. 37-38)
- **Training** – According to SBC Wisconsin, CLECs have access to 26 OSS workshops covering the three modes of entry (resale, UNE and interconnection) and specific products and services (UNE-P, EELs, dark fiber and broadband services). SBC Wisconsin states that its training classes feature small class sizes and include take-home copies of the instructor and student guides. (SBC Wisconsin Brief, pp. 38)

- **Technical Assistance** – SBC Wisconsin states that it provides CLECs with an OSS Customer Support team that provide carriers with assistance in establishing its access to SBC Wisconsin's OSS through technical discussions on hardware and software requirements, training needs and implementation. The LSC is also available to assist CLECs with questions related to individual orders or maintenance questions while the LOC is available to address maintenance and provisioning issues. SBC Wisconsin also has a Network Services Organization that handles inquiries for high-capacity products and services for both wholesale and retail and the Information Services (IS) Call Center is available for technical support for OSS connections. Finally, SBC Wisconsin has the Mechanized Customer Protection Support Center (MCPSC) to respond to CLEC questions for ordering, such as formats and product codes and assist CLECs in analyzing order errors. (SBC Wisconsin Brief, pp. 38-39)
- **Interactive CLEC Website** – According to SBC Wisconsin, CLECs may also access SBC's interactive website that contains many resources useful to CLECs including: a CLEC Handbook and referenced guide that describes procedures and business rules and ordering codes; description and availability of training programs; an IS Call Center Site that provides information on system status; copies of accessible letters which notify CLECs of upcoming changes to the OSS and; monthly performance data. (SBC Wisconsin Brief, pp. 39-40)
- **CLEC User Forum** – SBC Wisconsin states that the CLEC User Forum meets once a month to discuss issues that CLECs deem critical to their business needs. An executive steering committee meets twice a month. (SBC Wisconsin Brief, p. 40)

Change Management Plan: SBC Wisconsin asserts that its change management plan (CMP) is modeled after other SBC plans that have been found by the FCC to be compliant with section 271 requirements. According to SBC Wisconsin, its plan was subject to 13 months of negotiations with CLECs pursuant to the FCC's merger conditions. This plan was filed with the FCC and no CLEC sought to arbitrate any provision at the federal level. SBC Wisconsin also asserts that CLECs may actively participate in the CMP through periodic CMP meetings where CLECs can suggest and discuss OSS improvements. The CMP also contains detailed procedures where by CLECs may participate in the development and implementation of an OSS change including the walk-through, comment, and testing phase. SBC Wisconsin's written CMP contains detailed timelines and procedures for changes based on the OSS interface. The CMP also contains a dispute resolution process whereby an OSS update may be delayed, modified or blocked if a majority of the CLECs affected by the change vote against its release. According to SBC Wisconsin, a new Joint Testing Environment (JTE) was introduced in January 2001 for testing the March 2001 OSS enhancements. SBC Wisconsin asserts that its JTE is stable in that it does not change after the test period begins. SBC Wisconsin also asserts that it will work with CLECs in the JTE to monitor test transactions and assist in analyzing test results. Finally, SBC Wisconsin states that it offers carriers "versioning" which allows carriers to continue using two proceeding versions of an existing OSS software after a newer version is released. According to SBC Wisconsin, versioning for order and pre-order was implemented in March 2001. (*Id.* pp. 41-45)

UNE Combinations: According to Mr. Alexander, "combinations of network elements fall into two general categories: 1) network elements that are currently physically combined in

Ameritech's [SBC's] network at the time of the CLEC's request; and 2) network elements that are not currently physically combined in Ameritech's network at the time of the CLEC's request." (Alexander Aff. ¶ 62) Mr. Alexander asserts that, consistent with FCC rule 51.315(b), SBC Wisconsin does not separate UNEs that are currently physically combined in its network unless a CLEC requests that it do so. (Alexander Aff. ¶ 62) According to Mr. Alexander, the Eighth Circuit concluded that SBC Wisconsin was not required to combine UNEs for requesting carriers. ((Alexander Aff. ¶ 64) However, Mr. Alexander states that, "Ameritech [SBC Wisconsin] readily acknowledges that the PSCW addressed Ameritech [SBC] Wisconsin's obligation to provide new UNE combinations in its final Decision (Phase I) in Docket No. 6720-TI-160 ... and will comply with the 160 Order so long as that decision stands." (Alexander Aff. ¶ 64) Finally, Mr. Alexander asserts that SBC Wisconsin provides UNEs, "in a manner that allows the CLEC to combine such elements" themselves. (Alexander Aff. ¶ 68) According to Mr. Alexander, CLECs may combine UNEs using a variety of collocation options. (Alexander Aff. ¶ 68)

In its initial brief SBC Wisconsin stated that its obligation to combine previously uncombined network elements was currently before the U.S. Supreme Court. (SBC Wisconsin Brief, p. 17)

Pricing: SBC Wisconsin asserts that its UNE rates, "comply fully with all FCC and statutory requirements." (SBC Wisconsin Brief, p. 18) According to SBC Wisconsin, in February 1997, the company filed revised cost studies conforming to the Commission's order in Docket 6720-TI-120 and the Commission issued an order in May 1997 establishing prices. (Smith Aff. ¶ 11) SBC Wisconsin also states that a second cost proceeding (Docket

Docket 6720-TI-170

6720-TI-161) began in December 1999 to establish UNE rates in Wisconsin. (Smith Aff. ¶ 11) According to SBC Wisconsin, the 161 docket included the filing of expert testimony by many parties, extensive evidentiary hearings, briefs, and oral arguments. (Smith Aff. ¶¶ 13-16) While the Commission's decision is pending, SBC Wisconsin asserts that it, "will comply with that order, while reserving its rights to seek rehearing and/or judicial review." (SBC Wisconsin Brief, p. 19)

CLEC Comments - OSS

Z-Tel

Line Loss: Z-Tel states that they have had chronic problems with SBC Wisconsin sending accurate and timely line loss notifications. Z-Tel states that its loss notices had missing or inaccurate data and was often times late resulting in double billing to customers. (Walters Aff. ¶ 17) According to Mr. Walters, this affects Z-Tel's business in three ways. First, customers are double billed because Z-Tel has no way of knowing that a customer has migrated to another carrier and therefore should stop billing. Because of untimely loss notices, the customer receives two bills – one from Z-Tel and one from the new carrier. Second, customers blame Z-Tel for double billing problems even though the error was with SBC Wisconsin. Finally, without accurate and timely notices of when customers disconnect, Z-Tel is unable to accurately audit SBC Wisconsin UNE bills. (Walters Aff. ¶¶ 18-20) Finally, Z-Tel states that the problem became so severe that Z-Tel filed a complaint in Illinois. The Illinois Commerce Commission concluded that "Ameritech [SBC] has unreasonably provided Z-Tel inferior and discriminatory access to operations support systems." (Walters Aff. ¶ 23 citing the ICC Order)

Billing: Z-Tel states that SBC Wisconsin's wholesale bills are "impossible to accurately audit and reconcile" and its billing dispute process is "excessively difficult to navigate." (Walters Aff. ¶ 26) Z-Tel asserts that it has 404 official billing disputes with SBC Wisconsin with 159 more than 60 days old and 76 more than 120 days old. (Walters Aff. ¶ 27) According to Z-Tel, resolving billing disputes is further complicated due to the lack of line-by-line billing detail. (Walters Aff. ¶ 29)

DUF: According to Mr. Walters, SBC Wisconsin has "chronically transmitted to Z-Tel incorrect DUF records for intraLATA toll calls related to Z-Tel's end users, who are served over UNE-P." (Walters Aff. ¶ 30) Z-Tel also questions the reliability of SBC Wisconsin's DUF process when SBC Wisconsin was unable to resend corrected files because the data was not saved. (Walters Aff. ¶ 30)

WCOM

Line Loss: WCOM reports similar problems with line loss notices and states that the problem results from SBC Wisconsin's reliance on manual processes. (Lichtenberg Aff. ¶ 26) Ms. Lichtenberg states that not only was double billing a problem but there were account ownership mismatches where SBC Wisconsin inappropriately migrated customers to WCOM. (Lichtenberg Aff. ¶ 26) WCOM states that some problems have had electronic solutions but SBC Wisconsin still relies on some manual processes.

Flow-Through: WCOM argues that SBC Wisconsin is failing to meet its flow-through performance metrics. According to WCOM, if a product does not flow-through, then it requires manual processing that increases the chance for errors or mistakes. WCOM believes that SBC

Wisconsin does not have sufficient resources to manually handle thousands of orders a day. (Lichtenberg Aff. ¶¶ 23-25 and 30).

Missing Service Order Completions (SOCs): WCOM argues that while the problem of missing SOC has subsided, it still continues. According to WCOM, if a SOC is not received, manual intervention is required by WCOM that increases WCOM's "costs and inhibits our ability to serve commercial volumes of customers." (Lichtenberg Aff. ¶¶ 12-13). WCOM is forced to open trouble tickets until the appropriate electronic response is received for each Purchase Order Number (PON) contained in the trouble ticket. Without a timely SOC, WCOM does not know "exactly where the customer is in the provisioning cycle." (Lichtenberg Aff. ¶ 15) According to WCOM, some orders have completed and SBC Wisconsin has not notified WCOM thus preventing WCOM from servicing and billing the customer. In other instances, the order has not been provisioned and SBC Wisconsin failed to notify WCOM as to the status (e.g., rejected, jeopardy, etc.). WCOM states that without timely SOC, WCOM is denied revenue and customers are not satisfied.

Provisioning Errors: In contrast to the missing SOC problem above, WCOM states that at times, SBC Wisconsin is sending SOC but the order was not accurately provisioned. WCOM states that certain switch features are not provisioned at all. WCOM also states that a SOC is sent indicating that a customer has migrated to WCOM but this has not been programmed into SBC Wisconsin's back-end systems thus preventing WCOM from reviewing the customer's CSR. According to WCOM, either the switch translation systems are not working or manual handling is causing the problems. (Lichtenberg Aff. ¶ 43)

AT&T

Line Loss: AT&T states that it has similar experiences as Z-Tel and WCOM. AT&T also argues that SBC Wisconsin has not clearly explained why it had problems sending accurate and timely loss notices. Even after system fixes were introduced by SBC Wisconsin, AT&T asserts that the systems are “unstable.” (Willard Aff. ¶ 71). AT&T agrees with WCOM that excessive manual handling causes many problems but also states that SBC Wisconsin's “ill-defined or miss-implemented business processes” also cause problems. (*Id.*) AT&T also states that SBC Wisconsin’s processes are “peculiar” with respect to winbacks involving UNE-Loops. According to AT&T, when SBC Wisconsin obtains an AT&T customer that uses a UNE-loop, SBC Wisconsin sends a “port-out” order to AT&T. However, in these situations, SBC Wisconsin requires AT&T to submit a disconnect order to free up the CFA and stop the SBC Wisconsin billing, ensure that the winback indicator on the order, and supply the original SBC Wisconsin LSR number or else the order will not be properly processed and AT&T will continue to be billed for the CFA. According to AT&T, “Because Ameritech’s [SBC’s] systems are so convoluted and inefficient, AT&T is required to dedicate a portion of its personnel to working solely with these systems.” (Van De Water Aff. ¶ 41-42 and 44).

LSOG 4/LSOG 5/CMP: AT&T argues that SBC Wisconsin’s OSS are too reliant on manual processing which “is a recipe for disaster as order volumes increase.” (Willard Aff. ¶ 12). AT&T also argues that SBC Wisconsin’s deployment of LSOG 4 in March 2001, “was mired with documentation errors and deviated greatly from the stated change management timeframes, all of which made it virtually impossible for CLECs to be in a position to use it at the time it was implemented.” (Willard Aff. ¶ 33). According to Mr. Willard, part of the

problem was that parties were not sure which CMP SBC Wisconsin was using. Mr. Willard states that the official CMP was implemented contemporaneously with the LSOG 4 release. Mr. Willard also states that SBC Wisconsin consistently missed various CMP timeframes and continually made update changes to documentation requirements. (Willard Aff. ¶¶ 36-37) According to Mr. Willard, CLECs were receiving “clarification information and additional requirements for LSOG 4 well past the March 24th implementation date and even well into the summer of 2001 – months after the LSOG 4 release was allegedly ready for CLEC use.” (Willard Aff. ¶ 40) AT&T also argued that the LSOG 4 interface itself had a host of fatal system errors. According to Mr. Willard, AT&T had problems obtaining and then testing the new form of connectivity used for LSOG 4 testing in Chicago. He also indicated that joint testing revealed significant errors that took SBC Wisconsin an inordinate amount of time to fix. According to Mr. Willard, AT&T experienced the same problems when it attempted to upgrade to SBC Wisconsin’s LSOG 4 “dot” releases. AT&T argues that the problems with the LSOG 4 release are recurring with the LSOG 5 release including deficient documentation, extensive additional changes to documentation, missed CMP timeframes. According to AT&T, these problems were pervasive enough that SBC delayed the release of the LSOG 5 interface even though CLECs “were already allowed to engage in joint testing of the LSOG 5 interface.” (Willard Aff. ¶¶ 42-48) Based on this experience, AT&T believes that SBC Wisconsin’s CMP is unreliable. It also recommends that given the problems with SBC Wisconsin’s roll out and implementation of LSOG 5, the Commission should direct Bearing Point to test the LSOG 5 interface. (Willard Aff. ¶ 52)

Parsed Customer Service Record (CSR): – According to Mr. Willard, SBC Wisconsin is not providing hunting information in a parsed format but rather in a concatenated format as required by SBC Wisconsin’s business rules. This prevents AT&T service representatives using the parsed CSR information and placing it directly in the order, thus increasing manual work and the potential for errors. Mr. Willard states that this problem was to be fixed by the end of 2001 but SBC Wisconsin has delayed it until the release of LSOG 5. (Willard Aff. ¶ 73)

Market Entry Trial (MET): According to AT&T, its MET led to the discovery of unreliable and incomplete OSS responses. In some instances, AT&T received a FOC and a Reject on the same order. In other cases, AT&T received a Reject and a SOC on the same order. In both cases, AT&T states that the responses violate SBC Wisconsin’s OSS business rules. (Willard Aff. ¶ 75). In addition, AT&T states that SBC Wisconsin missed the committed due date it provided in the FOC for many orders. Finally, AT&T states that its MET has uncovered problems with SBC Wisconsin’s billing accuracy and reliability. According to AT&T, “The daily usage files provided by Ameritech [SBC] in that trial were in the majority of cases late and the calling information on those files was more inaccurate than accurate.” (Willard Aff. ¶ 80)

Joint Test Environment (JTE): AT&T argues that SBC Wisconsin’s joint test environment is not stable, not adequately supported, does not mirror the production environment, and limits the number of orders a CLEC may test to only 5 per day. (Willard Aff. ¶ 90)

CLEC Support: AT&T asserts that problems exist with SBC Wisconsin’s CLEC support services. According to Mr. Willard, AT&T has experienced extraordinary long hold times at the MCPSC; a problem AT&T claims was acknowledged by SBC. (Willard Aff. ¶ 107). AT&T also states that the role of the MCPSC is confusing relative to the other support centers

and recommends that SBC Wisconsin issue an Accessible Letter to better explain the roles of each organization

GUI: AT&T states that it has encountered problems when using SBC Wisconsin's ordering GUIs. According to AT&T, the "GUIs were unstable, slow in response time and, at times, completely unreliable." (Van De Water Aff. ¶ 9). When AT&T contacted SBC Wisconsin, it was bounced between SBC Wisconsin's service centers (primarily the LSC and the MCPSC); experienced long hold times on calls placed to the service centers; and was limited to three inquiries per call. Other problems include: orders first rejected and then completed; orders that required hunting features were routinely rejected; orders that received a FOC and later supplemented, were rejected and later completed. (Van De Water Aff. ¶ 12) According to AT&T, it was not sure if orders had completed or not. (Van De Water Aff. ¶ 14) AT&T concluded that while SBC Wisconsin's GUI is an electronic ordering interface, the back-end processing is largely manual causing AT&T service representatives "to spend an inordinate amount of time on the phone manually working orders, obtaining statuses, or working trouble issues." (Van De Water Aff. ¶ 15)

McLeod

McLeod filed four affidavits regarding this checklist item. Ms. Lori A. Deutmeyer states that McLeod has had billing and credit problems with SBC Wisconsin due to McLeod's merger with other CLECs. According to Ms. Deutmeyer, SBC Wisconsin is not able to "properly allocate [McLeod's one payment] amongst the various accounts that it maintains in its billing systems." (Deutmeyer Aff. ¶ 3) Ms. Deutmeyer also states that, "SBC-Ameritech [SBC Wisconsin] routinely issues incorrect billings to McLeodUSA for wholesale and interconnection

services” causing “McLeod to expend additional resources unnecessarily to carefully monitor each and every bill issued by SBC-Ameritech [SBC Wisconsin].” (Deutmeyer Aff. ¶¶ 4-5)

Ms. Bowers asserts that SBC Wisconsin does not have a wholesale process to effectuate a change of CLEC ownership. (Bowers Aff. ¶¶ 3-4) Ms. Bowers asserts that the lack of a change of ownership process, “makes the operations of McLeod less efficient because an order writer must know which former CLEC Access Customer Name Abbreviation (ACNA) and Service Provider IDs (SPIDs) to use to submit an order for a particular exchange.” (Bowers Aff. ¶ 4) According to Ms. Bowers, “SBC/Ameritech has processes in place to effectuate a seamless change in ownership for a retail customer when that customer acquires another retail customer.” (Bowers Aff. ¶ 5)

Ms. Michelle Sprague filed an affidavit discussing McLeod’s experience with LSOG5. Ms. Sprague asserts that McLeod could not perform pre-order testing due to connectivity problems. (Sprague Aff. ¶ 5) Ms. Sprague further asserts that McLeod has encountered, “over 20 defects in the LSOG 5 EDI joint test environment” suggesting that, “SBC did not do adequate internal testing before declaring the LSOG 5 EDI joint test environment open.” (Sprague Aff. ¶¶ 6-7) Ms Sprague asserts that, “In some instances, I believe that the coding on SBC-Ameritech’s system was not definitively completed and actually changed while McLeod USA was in the joint test environment.” (Sprague Aff. ¶ 6) Due to these problems, Ms. Sprague states that McLeod contacted the Illinois Commerce Commission, who then contacted SBC Wisconsin, who agreed to an extension of Issue 7. (Sprague Aff. ¶ 8) Ms. Sprague also outlined, “contradictions between the LSOG 5 EDI Mapping segment charges posted on SBC’s EDI Website and the coding in the SBC Joint Test Environment.” According to Ms. Sprague,

McLeod continues to have problems with the joint test environment due to this issue. (Sprague Aff. ¶¶ 9-10) Ms. Sprague also states that McLeod has had problems with SBC Wisconsin's LSOG 5 GUI stating that it could not obtain CSI information from SBC.

Mr. Todd G. McNally asserts that, "McLeodUSA noticed a substantial increase in trouble isolation charges (TICs) assessed by SBC-Ameritech [SBC Wisconsin] shortly after McLeodUSA became eligible for remedies under interim remedy plans in Illinois and Ohio." (McNally Aff. ¶ 3) According to Mr. McNally, "data provided by SBC-Ameritech indicates that SBC-Ameritech technicians – at least in Illinois – are coding NTF [no trouble found] more often on CLEC trouble tickets than on retail customers' trouble tickets." (McNally Aff. ¶ 5, footnote omitted) Mr. McNally also states that SBC Wisconsin may not be assessing retail customers a like charge when NTF is coded. (McNally Aff. ¶6) Mr. McNally also asserts that, "several McLeodUSA customers reported that their service outage was fixed after a visit by the SBC-Ameritech technician" while the trouble ticketed was coded as NTF and McLeod was assessed a TIC (trouble isolation charge). In addition to the financial impact on McLeod, Mr. McNally outlined other negative impacts associated with TIC for NTF including; delays in restoring customer service; questioning the accuracy of SBC Wisconsin's performance data "since there appears to be no adequate means for independent verification" and; understated remedy payments. (McNally Aff. ¶8)

NDT

Northern Telephone Data (NTD) filed two affidavits regarding this checklist item. According to Ms. Cindy Jones, NTD has numerous problems with SBC Wisconsin's OSS (e.g. receiving completion notification for new installation of lines when the lines were never

installed; no receipt of intercept messages when lines are disconnected; receiving completion notices when the work was never completed; and repair tickets closed when trouble was not fixed). (Jones Aff. ¶¶ 5-10) Ms. Jones also asserts that NTD has had problems with SBC Wisconsin's Web-Lex, resulting in NTD having to manually process orders. Some of these problems include: no training available for placing UNE orders via LSR forms; orders being rejected between July and September 2001; receiving incomplete firm order confirmations (FOCs); the inability to reverse invalid rejects after the POR release in April 2002; and losing directory listings when migrating a customer "as is." (Jones Aff. ¶¶ 11-17)

Ms. Diane Burke filed an affidavit detailing billing problems NTD has had with SBC Wisconsin including: billing toll usage when the PIC's are NTD; double billing of the same lines on the same invoice; failure to charge proper rates for resale contracts; incorrect usage being recorded; and incorrect rates being applied. (Burke Aff. ¶ 4) Ms. Burke asserts that, "SBC/Ameritech continually fails to properly, accurately, and timely bill NTD, resulting in NTD having to expend valuable time and resources to resolve the problems. This impacts NTD's ability to compete with SBC/Ameritech." (Burke Aff. ¶ 5)

TDS

TDS filed an affidavit by Mr. Cox who asserts that, "SBC/Ameritech is not meeting the Act's interconnection requirements because it continually fails to properly and accurately bill TDS Metrocom." (Cox Aff. ¶ 18) Specifically, Mr. Cox asserts that SBC Wisconsin "changed the billing invoice format from an extractable text file to a non-extractable PDF file." (Cox Aff. ¶ 19) Mr. Cox also asserts that SBC Wisconsin's invoice layout makes it difficult to capture all USOC information, that non-recurring charges are one year old or longer, invoices contain

invalid charges and is unable to make timely changes to its billing system. (Cox Aff. ¶¶ 21-24)

According to Mr. Cox, “billing disputes are a normal part of the CLEC business.” (Cox Aff. ¶ 90)

Mr. Cox also asserts that, “The quality of service that SBC/Ameritech provides to CLECs is woefully inadequate and continues to negatively impact the ability of CLECs to compete.”

(Cox Aff. ¶ 42) Even though SBC Wisconsin claims to be providing 95% performance, Mr. Cox states that “95% is not good enough.” (Cox Aff. ¶ 45) Mr. Cox asserts that, “Evidence supports the conclusion that some tickets are not being properly coded.” (Cox Aff. ¶ 69) According to Mr. Cox, a inordinately large number of TICs have been assessed by SBC Wisconsin. (Cox Aff. ¶¶ 69-70)

Mr. Cox also asserts that TDS had problems with SBC Wisconsin’s LSOG4. According to Mr. Cox, TDS encountered difficulties because SBC Wisconsin’s test environment and product environment do not match. Mr. Cox also asserted that TDS had problems due to SBC Wisconsin’s heavy reliance on workarounds and temporary fixes rather than long-term solutions to identified problems. (Cox Aff. ¶ 74) Mr. Cox also states that “Many of the problems TDS Metrocom is having with LSOG4 are related to the ‘Address not in Verigate’ issue.” (Cox Aff. ¶ 75) According to Mr. Cox, “over 460 documented orders have been negatively affected” by this issue. (Cox Aff. ¶ 75) Mr. Cox asserts that SBC Wisconsin’s manual fix for this issue causes additional anti-competitive issues. (Cox Aff. ¶¶ 75-79) Mr. Cox also discusses other problems with SBC Wisconsin’s OSS interfaces and states that, “Many times the impact is reflected in TDS Metrocom’s ability to provide good service and, more importantly, the negative effect on our reputation.” (Cox Aff. ¶¶ 82-88)

CLEC Comments – UNE Combinations

Norlight

According to Norlight, SBC Wisconsin’s “currently proposed tariff, ... purports to restrict the availability of its tariffed UNE combination offering to telecommunications carriers with interconnection agreements dated before September 25, 2001. Ostensibly, SBC Wisconsin’s proposed cut-off date was selected to correspond to the date of the Commission’s September 25, 2001 order in the OSS docket (6720-TI-160), and thus, notice to negotiating carriers of the Commission’s new UNE combination requirements.” (Norlight Comments p. 1) Norlight has three objections to this provision. First, it “limits a carrier’s access to tariffed offerings.” (Norlight Comments p. 1) However, Norlight states that if SBC Wisconsin is allowed to have this restriction, “the Commission should require Ameritech [SBC] to propose and provide ... a UNE combination amendment that offers no less than what the Commission ultimately approves in Ameritech’s proposed tariff.” (Norlight Comments p. 2) According to Norlight, “Without such amendment, the Commission would leave Ameritech [SBC] free to proposed interconnection agreement or amendment terms that plainly do not measure up to the UNE combination standards that the Commission will be setting for Ameritech in this proceeding.” (Norlight Comments p. 2)

Second, Norlight opposes a cut-off date but if one is required, it should be no earlier than May 13, 2002, the date of the U.S. Supreme Court’s decision in *Verizon Comm. v. FCC*. (Norlight Comments pp. 1-2) Finally, Norlight asserts that because it took SBC Wisconsin approximately three months to date and file its interconnection agreement, “Ameritech’s [SBC’s] proposed restriction should ... not be based on the date of the interconnection agreement (as

Ameritech has proposed), but on the date the CLEC executed the agreement.” (Norlight Comments p. 2) According to Norlight, without this change, the “date placed by Ameritech on an interconnection agreement can have almost no bearing on the date that a CLEC has actually agreed to the terms of its interconnection with Ameritech [SBC Wisconsin].” (Norlight Comments p. 2)

Norlight also opposes the BFR-OC process and states that the process, “is patently unreasonable and inflated” because it requires carriers, “to wait a minimum of three (3) months (30 days for an initial quote + 60 days for a final quote) to get a final quote for doing something that, by definition, Ameritech [SBC Wisconsin] ordinarily does for itself.” (Norlight Comments p. 3)

Finally, Norlight recommends that SBC Wisconsin’s proposed tariff be expanded to include DS3/fiber loops, dark fiber loops, and dark transport.” (Norlight Comments p. 3)

TDS

According to Mr. Cox, “SBC/Ameritech does not demonstrate current compliance with Checklist Item 2 because it does not provide UNE combinations in a nondiscriminatory manner.” (Cox Aff. ¶ 91)

AT&T

According to AT&T, “Ameritech [SBC] is still refusing to provide UNE combinations as required by the Commission.” (AT&T Comments, p. 3) AT&T states that as part of the Ameritech/AT&T arbitration, the Commission ordered, “Ameritech to provide UNE combinations that it provides to its own retail customers in the ordinary course and specifically rejected Ameritech’s argument that it need only provide combinations that are ‘currently

physically combined.” (AT&T Comments, p. 3) In addition, AT&T asserts that, “Because its affidavits were filed before the Verizon decision, ... SBC Wisconsin has not spoken to the issue or presented its interpretation and explained how it intends to implement *Verizon*.” (AT&T Comments p. 26)

Z-Tel

Mr. Walters states that as a result of the Supreme Court’s decision, “SBC Wisconsin without question is legally required to provide CLECs with existing combinations, as well as new combinations.” (Walters Aff. ¶ 34)

CLEC Comments – Pricing

AT&T

AT&T filed an affidavit by Mr. James F. Henson who asserts that, “SBC Wisconsin’s presentation in this docket ... is both premature and stale at the same time. It is *premature* because Ameritech [SBC] Wisconsin has not allowed the Commission to complete its work in reviewing SBC Wisconsin’s TELRIC studies for UNEs and interconnection ... [and]... *stale* because, notwithstanding a May 6, 2002 quick update job by Ameritech, its testimony still predicts ‘future’ Commission action that has in fact already taken place.” (Henson Aff. ¶ 11, emphasis in the original) In addition, Mr. Henson asserts that, “Ameritech’s UNE Prices is far from complete” given the fact that SBC Wisconsin has appealed the Commission’s order and parties have discovered many problems with SBC Wisconsin’s compliance filing. (Henson Aff. ¶¶ 15-16) According to Mr. Henson, without finalized TELRIC –based rates, CLECs lack “certainty to conduct business.”

Mr. Henson also states that CLECs “live in fear of the latest Ameritech [SBC] Wisconsin price increase initiative.” According to Mr. Henson, SBC have proposed aggressive increases in UNE-P (e.g., proposed rates in Ohio would double prices for the UNE-P) (Henson Aff. ¶ 27) Mr. Henson states that, “It is curious indeed that after the tens of thousands of hours devoted to UNE Pricing by state Commissions, Staffs, the industry and even Ameritech itself, the Company believes that we have somehow gotten it all wrong.” (Henson Aff. ¶ 28) Mr. Henson recommends that, “the Commission require Ameritech to cap UNE prices ultimately determined in the UNE pricing docket for three years – if Ameritech [SBC] Wisconsin desires to be deemed to be section 271 –compliant by the Commission.” (Henson Aff. ¶ 30)

WCOM

WCOM states that due to the “sheer volume” of SBC Wisconsin’s compliance filing in the 161 proceeding, it will be some time before CLECs know what UNE rates will be in place. (Campion Aff. ¶ 5) According to WCOM, while the review of the compliance filing is not yet competed, WCOM has, “identified major areas of disagreement with Ameritech’s compliance submissions.” (Campion Aff. ¶ 5) WCOM also states that SBC Wisconsin has appealed virtually every aspect of the Commission’s order, causing even further uncertainty for CLECs. (Campion Aff. ¶ 6) According to WCOM, the UNE compliance filing in Illinois lasted over four years due to Ameritech’s refusal to comply with the Illinois Commission’s orders. (Campion Aff. ¶¶ 8-10) For these reasons, WCOM recommends that SBC Wisconsin’s existing UNE rates be capped for five years. (Campion Aff. ¶ 15)

TDS

According to Mr. Cox, “Unlike other pricing sections, SBC/Ameritech relies on the old 6720-TI-120 pricing, and does not even mention the ongoing UNE proceeding or its recent appeal of the Commission’s UNE Order.” (Cox Aff. ¶ 93)

SBC Wisconsin Reply

OSS Issues

SBC Wisconsin filed reply affidavits by Messrs. Cottrell and Brown and Ms. Kagan in response to CLEC assertions regarding SBC Wisconsin’s compliance with this checklist item.

Line Loss: SBC Wisconsin asserts that some manual processes have been eliminated while other manual processes have been improved. Specifically, Mr. Cottrell states that SBC Ameritech has “eliminated the need for manual processing of winback orders with the April 24, 2002 Uniform and Enhanced OSS Plan of Record” which contributed to the line loss problem. (Cottrell Reply Aff. ¶ 6) SBC Wisconsin also discovered that service representatives were not, “entering all of the appropriate information into the MOR/Tel record to allow for the accurate processing of line loss notifications” for CLEC to CLEC migrations. (Cottrell Reply Aff. ¶ 7) According to Mr. Cottrell, SBC Wisconsin also identified and resolved several issues related to partial migrations. (Cottrell Reply Aff. ¶¶ 8-11). Mr. Cottrell asserts that in each instance, methods and procedures were improved to resolve the problem. Mr. Cottrell states that SBC Wisconsin “continues to monitor internal reports related to line loss notifications on a daily basis” and has requested that CLECs forward any line loss problems to SBC Wisconsin for investigation. (Cottrell Reply Aff. ¶ 12) Mr. Cottrell disagrees with CLEC assertions regarding line loss and states that SBC Wisconsin has been working with these CLECs individually to

identify and resolve all line loss issues. Based on this work, SBC Wisconsin has implemented a series of controls and system enhancements to resolve the problems. (Cottrell Reply Aff. ¶¶ 13-20) In response to specific comments by CLECs, Mr. Cottrell states that AT&T's issues were a result of manual processes that no longer exist. (Cottrell Reply Aff. ¶ 16) He also states that Z-Tel's vendor was the cause of its problem with sending line loss notifications with empty fields, not SBC Wisconsin. (Cottrell Reply Aff. ¶ 19; See also Brown Reply Aff. ¶¶ 3-14) Mr. Brown also responds to AT&T's issue regarding loop recovery during winback situations. According to Mr. Brown, per AT&T's interconnection agreement, AT&T is required to "issue a LSR to disconnect the unbundled loop when Ameritech [SBC Wisconsin] retail organization has ported the end user's telephone number in a Winback situation." (Brown Reply Aff. ¶ 16)

LSOG 4: Mr. Cottrell asserts that contrary to AT&T's statements, "Ameritech [SBC] did not miss any of [the] agreed upon change management notification dates" for implementing the March 2001 release. (Cottrell Reply Aff. ¶ 27) According to Mr. Cottrell, "Though several changes were made to the March 24 release requirements after the final requirements were released, these changes were a result of additional collaborative walkthrough sessions, which were held at the request of the CLECs." (Cottrell Reply Aff. ¶ 27) Mr. Cottrell asserts that AT&T had sufficient time to have its systems ready for the new release. Finally, Mr. Cottrell states that no CLEC requested a vote to stop the release as is there right under the CMP. (Cottrell Reply Aff. ¶ 29) In response to AT&T's problem with obtaining connectivity with SBC Wisconsin, Mr. Cottrell states that AT&T did not follow SBC Wisconsin's business rules that require CLEC equipment to be compatible with SBC Wisconsin's equipment. (Cottrell Reply Aff. ¶ 31) Regarding its issue with testing of CORBA, Mr. Cottrell asserts that AT&T

was the first to test this interface. In addition, AT&T requested that its traffic be sent via Dallas, which SBC Wisconsin was unable to do. In response to AT&T's issue with the 13-state profile, Mr. Cottrell states that AT&T had to provide certain information to begin testing because "the business rules had not yet been completed describing how to completely fill out the 13-state CLEC profile document." (Cottrell Reply Aff. ¶ 34) Regarding AT&T's issue with respect to the "parsed CSR", Mr. Cottrell asserts that the LSOG 5 GUI corrected this issue. (Cottrell Reply Aff. ¶ 35)

SOC Issues: In response to WCOM's problem with missing SOC's, Mr. Cottrell states that the SOC's are not really missing. When WCOM is unable to locate a SOC, Mr. Cottrell states that SBC Wisconsin investigates and, "many times, it turns out that Ameritech [SBC Wisconsin] actually did send the SOC to WorldCom." (*Id.* ¶ 36) Mr. Cottrell asserts that WCOM's number of missing SOC's does not agree with Ameritech's number, which is less than 9 per day, and in any event, WCOM agrees that the situation is improving. (*Id.* ¶ 37) (See also Brown Reply Aff. ¶ 42-44)

JTE: According to Mr. Cottrell, the JTE is "production + 1" and therefore does not mirror the production environment. (Cottrell Reply Aff. ¶ 38) Mr. Cottrell agrees with AT&T's assertion that SBC Wisconsin limits the number of test orders to 5 per day but states that more orders may be placed, provided advanced notice is given by the CLEC. (Cottrell Reply Aff. ¶ 39) According to Mr. Cottrell, during its test, AT&T submitted more than five orders per day but also submitted four or fewer orders on more than half the days. (Cottrell Reply Aff. ¶ 39)

Directory Listing: In response to NTD, Mr. Cottrell asserts that “Ameritech [SBC] found an internal table problem that generated errors in the directory listing database on migration orders submitted with the ‘retain listing as is’ option via the LSOG5 version of Ameritech’s ... EDI interface.” According to Mr. Cottrell, this was corrected in July 2002 (Cottrell Reply Aff. ¶ 57)

LSOG5: In response to CLEC comments regarding LSOG5, Mr. Cottrell asserts that “LSOG5, or even LSOG4, is not a requirement of 271-checklist compliance.” (Cottrell Reply Aff. ¶ 58) Mr. Cottrell stated that LSOG5 was delayed one month due to the unanticipated problems discovered during testing. (Cottrell Reply Aff. ¶ 60) According to Mr. Cottrell, these problems were discussed with CLECs and, “the parties eventually reached concurrence on SBC’s proposed [release] date.” (Cottrell Reply Aff. ¶ 61) SBC Wisconsin agrees with AT&T’s assertion that many changes were made to the LSOG5 documentation but Mr. Cottrell states that, “the documentation changes were either made at the CLECs’ request or with their concurrence.” (Cottrell Reply Aff. ¶ 64) In response to McLeod’s assertion that it could not complete pre-order testing with SBC Wisconsin due to connectivity problems, Mr. Cottrell states that McLeod did not understand SBC Wisconsin’s business rules regarding the mapping of certain fields to the EDI transmission from SBC Wisconsin. According to Mr. Cottrell, SBC Wisconsin and McLeod have met several times to discuss this issue. (Cottrell Reply Aff. ¶ 65) In response to NTD’s inability to reverse invalid rejects, Mr. Cottrell states that an “interim work around process” is being developed and should be “sufficient for handling the small subset of orders.” (Cottrell Reply Aff. ¶ 66)

Enhanced Verigate and LEX GUIs: In response to AT&T's assertion that SBC Wisconsin's GUIs are slow and unstable, Mr. Cottrell states that AT&T had inappropriately connected to SBC Wisconsin's OSS and once this was corrected, AT&T did not experience any further delays. (Cottrell Reply Aff. ¶ 67) Mr. Cottrell also asserts that all other problems identified by AT&T have been corrected as of October 2001. (Cottrell Reply Aff. ¶¶ 68-69) In response to TDS' issue regarding "address not in Verigate," Mr. Cottrell states that CLECs should enter the address in the "New Construction" field if they are sure the address is correct. (Cottrell Reply Aff. ¶ 71) Mr. Cottrell also disagrees with Ms. Jones assertion that SBC Wisconsin had no training class for placing UNE orders via LSR forms. According to Mr. Cottrell, this class was introduced in October 2001. (Cottrell Reply Aff. ¶ 72) Finally, Mr. Cottrell asserts that a final mechanized solution will be implemented in February 2002 in response to NTD's issue of not receiving circuit numbers or order numbers on FOCs. (Cottrell Reply Aff. ¶ 73)

Flow-Through – Contrary to WCOM's assertion, Mr. Cottrell states that SBC Wisconsin has provided documentation stating that contracts do not flow-through SBC Wisconsin's systems, "therefore, there is nothing misleading or 'fatally flawed' about Ameritech's [SBC's] flow-through reporting." (Cottrell Reply Aff. ¶ 74) Mr. Cottrell also states that the Company has been working with CLECs to prioritize flow-through enhancements, including WCOM's request to "flow-through UNE-P migration orders of accounts which have retail call packs." (Cottrell Reply Aff. ¶ 75)

AT&T's MET – Mr. Cottrell asserts that AT&T's market entry trial was successful given the fact that AT&T stated that it would not launch service without adequate OSS.

According to Mr. Cottrell, AT&T has entered the local market in both Michigan and Illinois and announced plans for entering the Ohio market. Mr. Cottrell states that, “in less than 8 weeks, AT&T signed up 50,000 new Michigan customers.” (Cottrell Reply Aff. ¶ 79) Mr. Cottrell asserts that, “If Ameritech’s [SBC’s] OSS performance really had the flaws AT&T’s regulatory arm suggests, it is hard to believe that AT&T’s commercial operations would be taking these steps and having such success.” (Cottrell Reply Aff. ¶ 79)

Workarounds: Mr. Brown disagrees with TDS’ assertion that SBC Wisconsin embraces workarounds as business as usual and states that SBC Wisconsin is always looking for ways to improve systemic processes if a manual workaround is in place. Mr. Brown also states that, “The LSC is in the business of manual order processing.” (Brown Reply Aff. ¶ 26) In response to AT&T’s assertion that it gets bounced from one service center to another, Mr. Brown states that while AT&T, “provides no specific examples, it is not the SBC Wisconsin LSC’s policy to blindly transfer customers from work group to work group.” (Brown Reply Aff. ¶ 27) According to Mr. Brown, CLECs are provided overviews of the various work groups and their responsibilities. (Brown Reply Aff. ¶¶ 28-31)

Change in Ownership Process: In response to McLeod’s assertions regarding the ability to mass-migrate customers, Mr. Brown states that, “There is no systemic mass account change available to Ameritech [SBC] Retail customers that I am aware of.” (Brown Reply Aff. ¶ 34) According to Mr. Brown, individual service orders must be completed to transfer customers for both retail and wholesale.

Billing Issues: In response to billing issues submitted by McLeod and TDS, Mr. Brown states that these carriers should, “contact the SBC Wisconsin LSC Billing team whenever billing

issues or discrepancies occur.” (Brown Reply Aff. ¶ 37) In response to TDS’ issue regarding the change in the billing format from an extractable/readable file to a non-extractable/non-readable format, Ms. Kagan acknowledges that the bill is not an extractable/readable file but the bill detail is. (Kagan Reply Aff. ¶ 8) In response to Z-Tel’s assertion that calls were erroneously classified local calls as toll, Ms. Kagan states that at one time this did occur, however, now local and toll calls are rated separately. (Kagan Reply Aff. ¶ 7) Ms. Kagan also states that, “Z-Tel did not object to the way in which the local calls were being displayed. Z-Tel simply billed all of the traffic at intrastate access rates...Z-Tel, to date, has not acknowledged that there was local usage included in the records and has still not issued a refund to Ameritech Illinois for local traffic that was over-billed at Z-Tel’s carrier access (rather than reciprocal compensation) rates.” (Kagan Reply Aff. ¶ 10) Regarding the Toll Usage issue identified by NTD, Ms. Kagan states that, “there have been rare instances of misrouted usage and PIC table errors [but] these are out of the ordinary and are typically actual instances of dial around usage by the end customer.” (Kagan Reply Aff. ¶ 12) Ms. Kagan also states that “NTD has not provided any information with which to verify whether NTD has been affected by this type of error and, if so, their frequency.” (Kagan Reply Aff. ¶ 12) Ms. Kagan also responds to billing disputes identified by McLeod, TDS and NTD. According to Ms. Kagan, some billing disputes do not contain sufficient information to validate the claim. (Kagan Reply Aff. ¶¶ 15, 18 and 20). For others, the disputes are being handled “through the billing dispute process” and in some cases credits have been issued and in other cases, negotiations are ongoing. (Kagan Reply Aff. ¶¶ 14, 16, 17, 19, and 21)

Missing FOCs: In response to NTD’s missing FOC issue, Mr. Brown states that SBC Wisconsin implemented, “an interim manual process to help NTD fulfill their request.” (Brown

Reply Aff. ¶ 40) According to Mr. Brown, because specific examples were not provided, additional investigation was not possible. (Brown Reply Aff. ¶ 41)

Provisioning Errors: Mr. Brown states that he is unable to investigate the switch provisioning errors identified by WCOM, “given the anecdotal nature” of these statements. (Brown Reply Aff. ¶ 45) According to Mr. Brown, provisioning errors could be the result of CLEC errors. (Brown Reply Aff. ¶ 46)

Coding of Trouble Tickets: In response to CLEC issues related to TICs, Mr. Muhs states that, “SBC Wisconsin did in fact determine that, under some circumstances, its technicians were not properly coding trouble tickets. However, the investigation indicated that the cause of this miscoding was that its technicians were trying to provide service beyond the work they were supposed to perform.” (Muhs Reply Aff. ¶¶ 30-33) In addition, Mr. Muhs asserts that, “SBC Wisconsin has long been required to not bill a customer trouble isolation charges (TIC) where no NID is present... I’m confident the probability of the technician [inappropriately charging TDS where there are no NIDs] would be quite small.” (Muhs Reply Aff. ¶ 37) Mr. Muhs also asserts that SBC Wisconsin is currently reviewing instances where TDS believes that it was inappropriately assessed TICs and will reverse any charges if appropriate. (Muhs Reply Aff. ¶ 38) Finally, Mr. Muhs states that, “Retail Service in Wisconsin is better than it has been for years and on over 90% of the parity measures Wholesale is getting equal or better service than retail.... Since I and the CLECs have yet to find a punishable case of mistreatment – much less large scale abuse – I urge the commission to find that the SBC Wisconsin technicians provide parity plus, not disparity, in their treatment of the CLECs and their customers.” (Muhs Reply Aff. ¶ 42)

UNE Combinations: Mr. Alexander acknowledges that his original affidavits were filed prior to the Supreme Court’s Verizon ruling which reinstated FCC rules 51.315(c) – (f). (Alexander Reply Aff. ¶ 29) However, Mr. Alexander asserts that, “SBC Wisconsin has, and has had for some time, effective tariffs that provide for existing and new combinations of UNEs, including UNE-P and enhanced extended loops or EELs.” (Alexander Reply Aff. ¶ 29) He also asserts that, “SBC Wisconsin offers interconnection agreement appendices and amendments that CLECs may request to amend their agreements that provide for new combinations involving UNEs in accordance with the Supreme Court’s Verizon decision (e.g., GIA, Appendix UNE).” (Alexander Reply Aff. ¶ 29) Finally, Mr. Alexander states that, “under certain arbitrated agreements (e.g., AT&T Agreement), CLECs in Wisconsin may obtain new UNE combinations which meet (and in some cases exceed) those requirements.” (Alexander Reply Aff. ¶ 29)

Pricing: According to Ms. Smith, as a result of the Commission’s order in Docket 7620-TI-120, SBC Wisconsin has TELRIC compliant rates. (Smith Reply Aff. ¶ 10) In addition, as a result of the 161 order, SBC Wisconsin “prepared an extensive compliance filing on May 21, 2002 (with a supplemental filing on June 19, 2002) with revised cost studies and tariffs.” (Smith Reply Aff. ¶ 6) Ms. Smith also states that these issues are not the subject of this order because all pricing issues have been deferred to Phase II. (Smith Reply Aff. ¶ 7) Ms. Smith also disagrees with AT&T’s assertion that SBC Wisconsin is unable to demonstrate checklist compliance until the 161 docket is completed and all rate disputes are settled. Citing the FCC’s BellSouth 271 order, Ms. Smith asserts that, “The FCC clearly does not require the conclusion of ongoing dockets as a condition of section 271 approval.” (Smith Reply Aff. ¶ 10)

In any event, Ms. Smith states that SBC Wisconsin will comply with the Commission's decision in the 161 docket.

Time Warner Communications' November 15, 2002 Filing

TWC states that it has had problems with special access to EELs conversions and asserts that SBC Wisconsin will likely bill TWC, "rates and charges for work Ameritech [SBC] has not performed." (Sherwood Aff. ¶ 21) According to Ms. Sherwood, a special access to EELs conversion is, "simply a billing change" but SBC Wisconsin will charge TWC for design and central office recurring and nonrecurring charges. (Sherwood Aff. ¶ 22) TWC recommends that, as a precondition to 271 approval, the Commission order SBC Wisconsin to, "only charge an administrative charge for special access to EELs conversion." (Sherwood Aff. ¶ 25)

TWC also opposes SBC Wisconsin's requirement that CLECs, "implement steps to certify on a continuing basis that the circuit remains eligible for conversion to EELs." (Sherwood Aff. ¶ 26) According to Ms. Sherwood, this requirement has not been imposed by either federal or state regulatory agencies. TWC also believes that SBC Wisconsin has "service quality problems associated with special access to EELs conversions" and recommends that the Commission undertake an investigation, "to ensure that Ameritech [SBC] is not engaging in anti-competitive conduct." (Sherwood Aff. ¶ 27) TWC also opposes SBC Wisconsin's policy to impose termination charges if, "the special access circuit is terminated prior to the conclusion of its term ordered out of the tariff" and recommends that the Commission require SBC Wisconsin, "not to double recover by charging termination charges and on-going recurring charges for the circuit as long as it is still billing CLECs." (Sherwood Aff. ¶ 28)

TDS's November 15, 2002 Filing

Mr. Cox filed a supplemental affidavit stating that SBC Wisconsin has not demonstrated that it provides non-discriminatory access to its OSS due to the open observations and exceptions from the BearingPoint test. (Cox Supp. Aff. ¶ 8-11) Mr. Cox also details problems with loop qualification and ordering of subloops that are discussed in greater detail under Checklist Item 4 – Unbundled Loops.

Mr. Cox also asserts that, “TDS Metrocom has learned that in some instances in which SBC/Ameritech has notified TDS Metrocom that no facilities are available, SBC/Ameritech has informed the customer that SBC/Ameritech can provide the requested service.” (Cox Supp. Aff. ¶ 19) Mr. Cox also provided examples of, “SBC/Ameritech technicians engaging in anti-competitive behavior.” (Cox Supp. Aff. ¶¶ 23-26; See also discussion under Track A)

Mr. Cox further asserts that since 1998 TDS, “has *never* received an accurate bill from SBC/Ameritech.” (Cox Supp. Aff. ¶ 27, emphasis in the original) Due to these billing errors, TDS has, “been forced to commit an unprecedented level of resources ... to review the accuracy of the bills it receives from SBC/Ameritech.” (Cox Supp. Aff. ¶ 29) According to Mr. Cox, SBC Wisconsin is now backbilling, double billing and providing incomplete bills. (Cox Supp. Aff. ¶ 33)

Finally, Mr. Cox asserts that SBC Wisconsin has modified its policy relating to Hi-Cap circuits, “that has reduced (by approximately 25-50%) the availability of Hi-Cap UNEs for CLECs.” (Cox Supp. Aff. ¶ 36) According to Mr. Cox, this new policy will require TDS to order more services from the access tariff, thus, “eliminating all profit potential.” (Cox Supp. Aff. ¶ 42)

WCOM's November 15, 2002 Filing

WCOM asserts that between August 15 and September 11, 2002, SBC Wisconsin failed to transmit approximately 14,000 line loss notifications throughout its five state region. According to WCOM, “neither Ameritech’s [SBC’s] internal controls nor the applicable metrics caught the problem.” (WCOM Comments p. 5) WCOM also asserts that it was two weeks before SBC Wisconsin began transmitting the recoveries, “at a level of approximately 1,000 per day without informing WorldCom of the missing notifications or the cause for the sudden transmission of high levels of ‘recoveries’.” (WCOM Comments p. 5) According to WCOM, due to the lack of line loss notices, it experienced an increase level of consumer complaints due to it’s continued billing of former customers. (WCOM Comments p. 5) WCOM also asserts that, “there continues to be instances in which SBC Wisconsin claims to have issued a line loss notification that was never received by WorldCom. These instances have resulted in WorldCom’s customers filing complaints at the PSCW regarding WorldCom’s alleged continued billing after termination of service.” (WCOM Comments pp. 5-6)

WCOM also states that SBC Wisconsin, “had been providing faulty call record information to WorldCom, which in turn led to faulty billing detail on consumers’ bills” for *66 and *69 services. (WCOM Comments p. 6) According to WCOM, this billing problem resulted because SBC Wisconsin did not follow OBF guidelines, “resulting in customer dissatisfaction and the need for meetings with PSCW Consumer Affairs Staff.” (WCOM Comments p. 6)

SBC Wisconsin's November 15, 2002 Filing

Mr. Scott Alexander filed a supplemental affidavit asserting that SBC Wisconsin, “offers binding terms and conditions for combinations of unbundled network elements (UNEs) that

satisfy the FCC rules and Section 271 checklist item (ii) requirements for access to UNE combinations, in light of the U.S. Supreme Court's reinstatement of 47 C.F.R. sections 51.315(c)-(f).” (Alexander Supp. Aff. ¶ 2, footnotes omitted) Mr. Alexander states that a revised tariff was filed on November 4, 2002 and is now effective. According to Mr. Alexander, the effective tariff contains the same provisions as the proposed tariff shared with the parties during the collaborative sessions. (Alexander Supp. Aff. ¶ 4 and FN 3) According to Mr. Alexander, a CLEC may also execute an interconnection agreement amendment which includes UNE combinations identical to those offered in the tariff or may execute the amendment that is part of the generic interconnection agreement (Alexander Supp. Aff. ¶ 4)

According to Mr. Alexander, the tariff includes 10 UNE-P types, 8 types of EELs as well as language on how CLECs may request new combinations, including a streamlined process for combinations considered “ordinarily combined.” (Alexander Supp. Aff. ¶¶ 6-9)

In response to Norlight's concern regarding the cut-off date, Mr. Alexander states that, “the combinations set forth in the tariff are available as an amendment to all currently effective interconnection agreements, consistent with the underlying terms of the agreement.” (Alexander Supp. Affidavit p. 3, FN 5) In response to earlier comments by Norlight regarding the BFR-OC process, Mr. Alexander states that the timelines contained in the BFR-OC process “specify maximum intervals, which are not necessarily the actual intervals a CLEC will receive for a given BFR-OC request.” (Alexander Supp. Aff. ¶ 12) In addition, Mr. Alexander states that a BFR process is necessary because, ‘common sense dictates that there is no practical way (or reason) for the tariff to list every conceivable combination of UNEs.” (Alexander Supp. Aff. ¶ 14) According to Mr. Alexander, the tariff contains UNE combinations for which SBC

Wisconsin has “standard ordering, provisioning, and billing methods and procedures.”

(Alexander Supp. Aff. ¶ 14) Mr. Alexander states that its BFR-OC process and standardize list of UNE combinations was recently approved by the Michigan Commission.

Regarding Norlight’s request for dark fiber and high capacity combinations, Mr. Alexander states that Norlight has not “profess to have any actual demand or any need for such UNE combinations, nor does it argue that such combinations are even ‘ordinarily combined’ by SBC Wisconsin.” (Alexander Supp. Aff. ¶ 17) Mr. Alexander asserts that it would be “tremendously wasteful and inefficient” to develop standardized processes for these combinations ‘before any actual demand has been established.” (Alexander Supp. Aff. ¶ 18) Mr. Alexander states that the Michigan Commission recently rejected similar requests from CLECs. (Alexander Supp. Aff. ¶ 18)

Norlight’s December 5, 2002 Filing

Norlight objects to five areas of SBC Wisconsin’s UNE Combination proposal. First, Norlight believes that SBC Wisconsin’s BFR-OC provision is not appropriate, reasonable and discriminatory because it will take, “three months just to get a price and no provisioning interval commitment thereafter for a UNE combination that, by definition, SBC/Ameritech ordinarily creates and uses.” (Norlight Comments p. 8) In addition, Norlight asserts that SBC Wisconsin requires CLECs to follow the entire BFR-OC process for a UNE-Combination even if that combination had already been through the BFR-OC process already. (Norlight Comments p. 8) Norlight also asserts that the process is discriminatory and that SBC Wisconsin has not demonstrated that the proposed BFR timeframes will provide CLECs access to UNE-Combinations in the same timeframes that SBC Wisconsin provides for itself. (Norlight

Comments p. 9) Norlight believes that SBC/Ameritech will be able to serve customers immediately while CLECs are required to submit to the “cumbersome and time-consuming BFR process.” (Walker Aff. ¶ 22)

Also, Norlight argues that because SBC Wisconsin takes so long to date and file agreements, SBC Wisconsin’s restriction should not be based on the date of the interconnection agreement but the date when the agreement was executed by the CLEC. (Norlight Comments p. 10)

Third, Norlight argues that, “if SBC/Ameritech is ultimately allowed to restrict the availability of its tariffed UNE combinations offerings because of interconnection agreements, the Commission should require SBC/Ameritech to propose and provide in this proceeding a UNE combination amendment that offers no less than what the Commission ultimately approves in SBC/Ameritech’s proposed tariff.” (Norlight Comments pp. 10-11) Norlight states that the current amendment does not have the same terms and contains a number of restrictions that are not contained in the proposed tariff.

Fourth, Norlight believes that the Wisconsin tariff should be amended to include “point-to-point DS1 data facilities.” (Walker Aff. ¶ 21) According to Mr. Walker, the Wisconsin offering should be consistent with the Illinois tariff that contains this provision.

Finally, Norlight opposes SBC Wisconsin’s requirement that a collocation arrangement is necessary for EELs “when, in fact, collocation should not be required.” (Walker Aff. ¶ 22)

NTD

According to Ms. Jones, “NTD did not start receiving COMPLETE FOCs (containing circuit ID and order numbers) until February 2002.” (Jones Reply Aff. ¶ 6) In response to Mr.

Brown, Ms. Jones states that in fact, all NTD orders were being improperly rejected including stand-alone loop and LNP orders. (Jones Reply Aff. ¶ 7) Ms. Jones also disagrees with Mr. Brown and states that, “NTD was not receiving FOCs on orders being worked manually.” (Jones Reply Aff. ¶ 8) According to Ms. Jones, a list of PONs was sent to SBC Wisconsin for investigation back in August 2001 and SBC Wisconsin has not yet responded. (Jones Reply Aff. ¶ 8)

In response to Mr. Cottrell’s comment regarding which LSOG5 orders could be placed electronically and which would require manual processing, Ms. Jones states that NTD had not planned on placing manual orders and therefore did not attend the training session. (Jones Reply Aff. ¶ 9) Finally, Ms. Jones states that, “no training was available for the UNE product as of July 2001.” (Jones Reply Aff. ¶ 10) While training was available in mid-2001, it “provided instruction on an ASR format, not LSR.” (Jones Reply Aff. ¶ 10)

In response to Mr. Brown’s claim that NTD has not communicated any billing problems to its account team, Ms. Burke states that there have been many meetings between NTD and its Account Team to discuss various billing issues. Ms. Burke also states that the average timeframe to resolve billing disputes is three months, which NTD does not consider timely. (Burke Reply Aff. ¶ 4-5) In response to Ms. Kagan, Ms. Burke asserts that it has 10 outstanding toll disputes with SBC Wisconsin, none of which involved a customer dialing around to SBC Wisconsin. (Burke Reply Aff. ¶ 6) Also in response to Ms. Kagan’s statements that she is unable to verify many of NTD’s allegations of billing errors, Ms. Burke states that information to validate each claim has been provided to NTD’s account team and both parties are currently working to resolve these disputes. (Burke Reply Aff. ¶¶ 7-12) However, Ms. Burke asserts that,

“These billing issues make it exceedingly difficult to conduct business in Wisconsin.” (Burke Reply Aff. ¶ 10)

Time Warner Communications (TWC) December 5, 2002 Filing

TWC recommends that the Commission require SBC Wisconsin to amend the BFR-OC provision to be consistent with two provisions contained in the Illinois version of the tariff. First, TWC recommends that the Wisconsin tariff BFR-OC process include “a provision that permits a CLEC to initiate the BFR-OC process by requesting that Ameritech [SBC] identify the network element combination that underlies a particular service.” (Sherwood Reply Aff. ¶ 7) TWC asserts that this requirement would reduce the number of disputes between CLECs and SBC Wisconsin by requiring the company to “reveal the network elements of a (potential disputed) service.” (Sherwood Reply Aff. ¶ 7) So as to avoid disputes regarding timeliness, TWC also recommends that the Wisconsin tariff include the Illinois process that is used to track the progress of BFR-OC requests by using identified reporting points. (Sherwood Reply Aff. ¶ 8)

TWC also recommends that SBC Wisconsin’s proposed tariff be modified to reflect that the tariff be consistent with both state and federal laws and regulations and not just federal law and regulations. (TWC Comments p. 4)

TWC states that the proposed tariff contains restrictions that are inconsistent with FCC rules including the restriction that “a CLEC be unable to make the combination itself.” (TWC Comments p. 4) TWC also opposes the local use restriction on new EELs as being “unwarranted and illegal.” (TWC Comments p. 6) According to TWC, this restriction was imposed by the FCC but limited only to circuits that are converted from special access to EELs. TWC asserts that the FCC did not extent this restriction to new EELs because, “When new EEL orders are

places, they do not constitute a substitute or replacement for special access nor do they result in a direct loss of special access rents by the ILECs.” (TWC Comments p. 7)

TWC also recommends that the proposed tariff be amended to include “DS3 loop to DS3 unbundled transport EELs” (TWC Comments p. 9) According to TWC, the Supreme Court determined that ILECs must offer specific combinations that are ordinarily combined unless the combination is not technically feasible or if the combination would impair the ability of other carriers to access UNEs or interconnect with the ILEC. TWC states that during the Wisconsin collaboratives, the company argued that DS3 EELs are not common and therefore should not be included as a standard offering. In response, TWC argues that whether an offering is standard or not is not permitted by FCC rules. According to TWC, the only two exclusions are technical infeasibility and impairment, and DS3 EELs do not fall under either exclusion. To support this assertion, TWC states that DS3 EELs are available in Texas, California and Ohio. (TWC Comments p. 10)

AT&T’s December 5, 2002 Filing

AT&T recommends that the Commission require SBC Wisconsin to, “remove from its tariffs all language that qualifies or reserves its right to withdraw new UNE combinations.” (AT&T Comments p. 31) AT&T agrees with a finding by the Michigan Commission that SBC Wisconsin is not making a binding commitment as required by section 271 if it could unilaterally withdraw its UNE combinations offering.

SBC Wisconsin’s December 5, 2002 Filing

According to SBC Wisconsin, “Under the BFR-OC process, the standard fees associated with preparing the preliminary analysis and final quote are waived. A CLEC may thus request

an ‘ordinarily combined’ UNE combination without the initial financial outlay or commitment that accompanies the normal BFR process.” (SBC Wisconsin Comments pp. 15-16) SBC Wisconsin also states that UNE combinations are available through an amendment to all effective interconnection agreements, “regardless of the date, consistent with the underlying terms of the agreement.” (SBC Wisconsin Comments p. 16)

Norlight’s December 15, 2002 Filing

Norlight asserts that SBC Wisconsin’s UNE combinations are not offered in a non-discriminatory manner because “SBC/Ameritech is using a tariff for one set of carriers, and an interconnection agreement with a different structure and terms for other carriers.” (Norlight Reply Comments pp. 4-5) Norlight also asserts that SBC Wisconsin’s tariff contains restrictions on new EELs combinations that are not contained in FCC rules. These restrictions include allowing new combinations only when the CLEC is unable to make the combining or is unaware that it needs to combine certain UNEs. Norlight also objects to the restriction that requires collocation for EELs, “in all circumstances.” (Norlight Reply Comments p. 5) According to Norlight, SBC Wisconsin has not justified these restrictions and has not shown that they are consistent with federal and state law.

Norlight recommends that the Commission conduct an investigation to determine if the terms in the amendment and proposed tariff are the same and to require SBC Wisconsin to follow a strict timeline for processing UNE combination amendments. (Norlight Reply Comments p. 5) Also, due to its “negative experience with SBC/Ameritech’s interconnection agreement processes,” Norlight recommends that the Commission adopt specific “deadlines relating to the processing of UNE combination amendments.” (Norlight Reply Comments p. 5)

SBC Wisconsin's December 15, 2002 Filing

In response to TWC's argument regarding the requirement that the CLEC be unable to combine the requested elements, SBC Wisconsin states that this requirement comes from the U.S. Supreme Court decision, "[a] n obligation on the part of an incumbent to combine elements for an entrant under Rules 315(c) and (d) only arises when the entrant is unable to do the job itself." (SBC Wisconsin Reply Comments p. 13, citing the Supreme Court's decision)

In response to TWC's opposition to the local use restriction, SBC Wisconsin states that the restriction is necessary to prevent the use of EELs to avoid access charges. SBC Wisconsin also states that the Commission need not decide this issue now because it "does not bear on local competition." (SBC Wisconsin Reply Comments pp. 14-15) To the extent a CLEC requires an EEL for local services, it should have no problem certifying to the local use test. "To the extent a carrier intends to use an EEL essentially as a front for long-distance special access service, any difficulty presented by the 'local use' standard would have no effect on the local market." (SBC Wisconsin Reply Comments p. 15)

SBC Wisconsin also disagrees with TWC's recommendation to use the Illinois version of the BFR-OC process. According to SBC Wisconsin, TWC does not explain why the Illinois provisions are necessary. SBC Wisconsin also states that, "Time Warner has made no showing that any of the Illinois provisions are required for checklist compliance." (SBC Wisconsin Reply Comments p. 15)

5. Commission Recommendation

As directed in previous orders, all OSS issues are deferred for Phase II and therefore, with the exception of the UNE tariff, OSS issues raised by the parties will not be discussed in this order.

The Commission addressed, in docket 6720-TI-161, the issues of TELRIC pricing, as it relates to SBC Wisconsin's provision of UNE. The compliance portion of that docket is not completed, so the issues of compliance with the provision of UNEs will be addressed in Phase II of this proceeding.

Based on the current record, SBC Wisconsin does not comply with Checklist Item 2 as it relates to UNE Combinations. SBC Wisconsin is hereby directed to make modifications to its tariff to be compliant with this checklist item.

First, SBC Wisconsin must remove all restrictions as described by AT&T. The Commission understands that SBC Wisconsin's language is essentially a "reservations of rights" that becomes effective only after the FCC issues its order in the Triennial Review proceeding. In other words, until the FCC issues the order and these restrictions become operational, SBC Wisconsin's language has no practical effect. When it is released, the Commission will conduct a thorough review and analysis of the FCC's order, especially in light of our state statutes providing independent state authority to order UNE combinations. Until then, this Commission will not sanction these restrictions.

Second, SBC Wisconsin must amend the BFR-OC provisions to be consistent with the Illinois tariff. For the reasons cited by TWC, we agree that the Wisconsin version should incorporate the Illinois provisions.

Third, SBC Wisconsin must amend its offering to eliminate the collocation requirement for EELs. The Commission agrees with Norlight that this restriction is unreasonable.

Finally, SBC Wisconsin must file UNE Combination amendments within ten (10) business days of execution. The delays created by Ameritech in filing executed agreements, as described by Norlight, are unreasonable.

At this time, the Commission does not agree that SBC Wisconsin's tariff should be amended to include DS3 and dark fiber product offerings. We agree with SBC Wisconsin that having these products would require SBC Wisconsin to have standardized procedures for ordering, provisioning, billing and repair. Until there is sufficient demand to justify the development of these procedures, they should not be classified as standard offerings.

The Commission agrees that SBC Wisconsin's use restriction is reasonable. The FCC's rules currently apply the use restriction on the conversion of existing special access circuits to EELS. However, the Commission believes that the rational applied to existing circuits also applies to new circuits. As SBC Wisconsin points out, if the new EEL is used for local services, the restriction has no affect. If the new EEL is used for access services, there is no impact on the local market.

Disputed Issues

- Does SBC Wisconsin's new UNE-P AND EEL combinations tariff comply with state and federal law?

SBC Wisconsin's combinations offering complies with state and federal law subject to the elimination of the "reservation of rights" language and the inclusion of the BFR process from the Illinois tariff.

- Are the process and timeframes in SBC Wisconsin's BFR-OC process reasonable and appropriate?

SBC Wisconsin's current combinations offering does not contain reasonable processes and timeframes for the BFR-OC process. SBC Wisconsin must modify its offering to be consistent with its Illinois offering as described by TWC.

- Should the offerings in SBC Wisconsin's UNE combination tariff only be available to telecommunications ca

The Commission believes that this is no longer an issue, given the filing of the November tariff revision.

- Should SBC Wisconsin be required to offer a UNE combination interconnection agreement amendment that offers UNE combinations on the same terms as provided in SBC Wisconsin's UNE combination tariff?

The Commission believes that the amendment and tariff should be consistent. However, in *Wisconsin Bell, Inc., vs. Bie, et. al.* the court has ruled that a requirement to tariff services conflicts with the 1996 Telecommunications Act's reliance on negotiation and arbitration. That ruling may also require that a tariff and a standard interconnection agreement amendment be consistent. This case is being appealed, so its impact is uncertain. To the extent that resolution a federal appellate court issues a decision before the end of Phase II, this issue will be considered in Phase II.

- Should the standard UNE combination offerings in SBC Wisconsin's UNE combination tariff include UNE combinations that specifically include high capacity loops (DS3/fiber), dark fiber loops, and dark fiber transport?

The Commission agrees with SBC Wisconsin that it is not reasonable for the company to have standardized ordering, provisioning, billing and other processes . until demand warrants.

- Do SBC Wisconsin's OSS reflect whether particular network elements are currently combined in its network?

This issue will be addressed in Phase II.

- If not, should SBC Wisconsin be required to develop OSS that reflects whether particular network elements are currently combined in its network?

This issue will be addressed in Phase II.

- Must competitors be able to purchase tariffed UNE combinations regardless of whether or not their interconnection agreements cover such UNE combinations?

The Commission has previously found, in arbitrations, that language in an interconnection agreement that prevents providers from buying from tariffs is unreasonably restrictive.

However, the courts have recently ruled that a requirement to tariff services conflicts with the 1996 Telecommunications Act's reliance on negotiation and arbitration. That ruling is being appealed. To the extent that resolution of that court case occurs before the end of Phase II, this issue will be considered in Phase II.

- Does the PSCW have the authority to prohibit SBC Wisconsin from withdrawing its UNE combinations tariff regardless of the outcome of the pending federal appeal of the OSS Order in 6720-TI-160?

This issue is deferred until the FCC issues the Triennial Review Order. It will be considered in Phase II, if the order has been released at that time.

- If so, should SBC Wisconsin be prohibited from withdrawing its UNE combinations tariff?

This issue is deferred until the FCC issues the Triennial Review Order. It will be considered in Phase II, if the order has been released at that time.

- What impact do Ameritech's September 10th Comments in 6720-TI-161 have on this proceeding?

This issue, and the impact of the *USTA* case, will be addressed in Phase II.

Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(iii) of the Act requires the applicant to provide “nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.”

47 U.S.C. § 224 outlines federal pole attachments regulations. Specifically, 47 U.S.C. § 224(f)(1) states that, “A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” However, 47 U.S.C. § 224(f)(2) provides some limitation to this requirement in that access may be denied on a non-discriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.” Although this section applies to utilities providing electric service, the FCC has concluded that it should also apply to telecommunications carriers as well. (VA, App. C, ¶ 47, fn 154)

47 U.S.C. § 224 also contains regulations regarding the pricing of pole attachments. Unless regulated by the states, the FCC, “shall regulate the rates, terms and conditions for pole attachments to provide that rates, terms and conditions are just and reasonable...” The State of Wisconsin does not regulate pole attachments.

2. FCC Discussion Regarding Compliance

Carriers seeking 271 approval must comply with all FCC rules and regulations regarding poles, ducts, conduits and rights-of-way.

3. Disputed Issues

The parties did not raise any disputed issues, regarding this checklist item, during the collaboratives nor in various filings made before the Commission.

4. Parties Positions

SBC Wisconsin

Through its brief and an affidavit filed by Ms. Marcia Stanek, SBC Wisconsin states that it fully complies with the requirements for this checklist item. According to SBC Wisconsin, all rates, terms and conditions for poles, ducts, conduits and rights-of-way that carriers may include as part of their interconnection contracts are detailed in Appendix ROW. SBC Wisconsin cites at least two carriers that have adopted this appendix as part of their interconnection agreement. SBC Wisconsin states that Appendix ROW is consistent with section 224 of the Act and FCC rules.

SBC Wisconsin also states that it does not charge for rights-of-way when access to the rights-of-way is provided in connection with access to a structure, such as a pole or conduit. Charges for other rights-of-way are determined on a case-by-case basis depending on the size of the area to be used by the CLEC as well as the number of existing customers of SBC Wisconsin's easement. (Stanek Aff. ¶ 29).

SBC Wisconsin also states that poles, ducts, conduits and rights-of-way are offered to CLECs in a non-discriminatory, first-come, first-served basis as long as space is available. (Stanek Aff. ¶ 10) Specifically, CLECs have access to the same maps and engineering records that are used by SBC Wisconsin. CLEC requests for access are evaluated against the same capacity, safety; reliability and engineering standards used by SBC Wisconsin to assess their

own facilities; non-discriminatory assignment of occupancy space on poles or conduit; make-ready work and capacity expansion intervals are the same for both SBC Wisconsin and CLECs. (Stanek Aff. ¶¶ 12-17.)

SBC Wisconsin asserts that the Appendix ROW contains provisions for a CLEC wanting to modify a structure, rearrange or replace an attachment, and to be reimbursed from other attaching parties who later use additional capacity created by a modification. (*Id.* ¶¶ 26-27.)

Finally, SBC Wisconsin asserts that there are a series of performance measures that are used to evaluate whether SBC Wisconsin is providing non-discriminatory access to its poles, ducts, conduits and rights-of-way

CLEC Comments

CLECs did not provide any comments regarding this checklist item.

5. Commission Recommendation

At this time, and subject to the outcome of Phase II, the Commission tentatively concludes that SBC Wisconsin has fully complied with Checklist Item 3. No party has challenged SBC Wisconsin's evidence regarding its assertion that it provides non-discriminatory access to poles, ducts, conduits and rights-of-way consistent with the Act and FCC rules. However, the Commission's conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting three months of performance data.

Checklist Item 4 – Unbundled Local Loops

1. Statutory Requirement

Sec 271(c)(2)(B)(iv) of the Act requires the applicant to provide “Local loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”

2. FCC Discussion Regarding Compliance

The FCC has defined a loop as the “transmission facility between a main distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises.” (VA, App. C, ¶ 48) This definition includes different types of loops including: 2-wire and 4-wire analog voice grade loops as well as loops conditioned for digital services such as ISDN, xDSL and DS1-level of signals.

In order to demonstrate compliance with this checklist item, a 271 applicant must show that it, “has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality.” (*Id.* ¶ 49) The BOC must also make available to competing carriers access to any functionality of the loop, including taking “affirmative steps” to condition loops to support DSL services, subject only to technical feasibility. The 271 applicant must also provide competing carriers access to unbundled loops served via digital loop carrier technology or other remote concentration devices. (*Id.* ¶ 49)

RBOCs must also comply with the FCC's Line Sharing Orders⁶ that require the BOC to unbundle and make available to competing carriers the high frequency portion of an unbundled loop. Selected performance measures are used to determine if the BOC has complied with the FCC's Line Sharing Orders including: "BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases." (*Id.* ¶ 51)

In addition to line sharing, the applicant must also demonstrate that it makes available line splitting whereby one or more CLECs provide voice and data over a single loop. This requirement also includes the ability for a competing carrier, either alone or with another carrier, the ability to migrate UNE-P customers to a line splitting arrangement. The applicant must provide evidence that it has a "legal obligation to provide line splitting through rates, terms and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport." (*Id.* ¶ 52)

⁶ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order In CC Docket No. 98-147 and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Fourth Report and Order In CC Docket No. 96-98, 14 F.C.C. Rcd. 20912 (1999)
In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order on Reconsideration in CC Docket No. 98-147 and In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 F.C.C. Rcd. 2101 (2001)

3. Disputed Issues

- WCOM has agreed to discuss with AADS/AIMS, a partnership arrangement for line splitting. Based on these discussions, the disputed issues outlined below may be removed from the list.⁷
 1. Can the PSCW require Ameritech [SBC] to migrate a customer's voice service to a CLEC's UNE-P offering without changing the data service?
 2. If so, should Ameritech [SBC] be required to migrate a customer's voice service to a CLEC's UNE-P offering without changing the data services?
 3. In a line sharing arrangement, can the PSCW require Ameritech [SBC] to grant access to the High Frequency Portion of the Loop (HFPL) when it is not the underlying provider of voice service?
 4. In a line sharing arrangement, is it technically feasible for Ameritech [SBC] to grant access to the HFPL when it is not the underlying provider of voice service?
 5. If so, should Ameritech [SBC] be required to grant access to the HFPL when it is not the underlying provider of voice service?
 6. Should Ameritech [SBC] be allowed to disconnect temporarily the customer's service when converting from UNE-P to line splitting?
 7. Should Ameritech [SBC] be required to implement a 1-order process for converting a line sharing arrangement to line splitting?
- Is Ameritech [SBC] currently required to remove non-excessive bridged taps as defined by ANSI for loops upon request? Is a separate charge for this activity allowed?
- What impact does Ameritech's [SBC's] September 10th Petition to Reopen the Record, or, in the Alternative, Complaint Regarding Its Loop Conditioning Rates have on this proceeding?
- What impact do Ameritech's [SBC's] September 10th Comments in 6720-TI-161 have on this proceeding?

Dark Fiber

- What is the proper definition for dark fiber for 271 compliance?
- Is the information provided by AIT [SBC Wisconsin] to CLECs pursuant to contract or tariff regarding dark fiber adequate (e.g., location of dark fiber facilities, ordering, etc.)? If not, what additional information should be provided?
- Are CLECs required to be notified when fiber will be terminated or has been terminated?
- Is there a process for CLECs to challenge AIT's [SBC's] assertion that dark fiber is not available and is that process adequate?

⁷ As noted below, the WCOM and AADS/AIMS discussion did not resolve these issues.

4. Position of the Parties

SBC Wisconsin

Through its brief and various affidavits, SBC Wisconsin states that it fully complies with this checklist item. Specifically, Mr. Scott Alexander describes the various interconnection contracts and tariff references for UNE-Loops, Subloops and Dark Fiber, Mr. Deere describes the product offerings, Mr. Brown discusses UNE-Loop provisioning with Local Number Portability (Hot Cuts) and Ms. Chapman describes SBC Wisconsin's compliance with the advanced services obligations.

NIDS: According to Mr. Deere, a NID "is defined as any means of interconnection of end-user customer premises wiring to SBC's loop distribution facilities, such as a cross-connect device used for that purpose. The NID contains the appropriate and accessible connection points or posts to which the service provider and the end-user customer each make their connections." (Deere Aff. ¶ 76-77) Mr. Deere states that when a CLEC provides its own loops, it may "connect to the customer's inside wire at the SBC NID, as is, at no charge. Any repair, upgrades, disconnects, or rearrangements required by the CLEC are performed by SBC based on time and material charges." (*Id.* ¶ 77-78) When a CLEC obtains UNE-Loops from SBC Wisconsin, the NID is also provided. According to Mr. Deere, "Ameritech [SBC] connects the drop wire between the distribution plant facilities and the NID at no additional charge to the CLEC." (*Id.* ¶ 79) Mr. Deere also states that in multi-tenant dwellings, a CLEC may provide its own NID to connect to a customer's inside wiring or it may use SBC Wisconsin's NID. Finally, as a result of the Wisconsin pre-hearing conferences, Mr. Deere states that SBC Wisconsin agreed to "move an internal protector or station block ... to an external location with a RJ-type

device at no charge to the CLEC. SBC Wisconsin will perform such work if it makes a customer premises visit for any reason (other than a CLEC work order as discussed below), unless the customer specifically requests that the protector, or station block not be moved.” (*Id.* ¶ 81) If a CLEC requests that an internal NID to an external location, SBC Wisconsin will perform the work on a time and materials basis. Finally, Mr. Deere asserts that there are performance measures used to monitor SBC Wisconsin’s performance relative to NIDs. (*Id.* ¶ 82)

UNE Loops: According to Mr. Deere, SBC Wisconsin provides the following unbundled loops and cross-connections to competing carriers either through interconnection agreements or approved tariffs:

- 2-Wire Analog loops. Options for this loop include: a conditioning option to reduce loss to no more than 5dB; ground start for PBX trunks; and coin
- EKL loops
- 4-Wire Analog loops
- 2-Wire Digital loops to support Basic Rate ISDN services
- 4-Wire Digital loops to support DS1 services, including Primary Rate ISDN services.
- 2-Wire 640 Kbps ADSL Compatible Loop facilities
- 2-Wire 768 Kbps HDSL Compatible Loop facilities
- 4-Wire 1.544 Mbps HDSL Compatible Loop facilities
- DS3 Digital Loop
- BFR for other loop types

(Deere Aff. at ¶ 91)

According to Mr. Deere, UNE-Loops include all “features, functions and capabilities of the transmission facility, including dark fiber and attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning.” (*Id.* ¶ 90)

UNE-Subloops: According to Mr. Deere, SBC Wisconsin makes subloops available at accessible points on the loop. An “accessible point” is “where technicians can access the copper

wire or fiber within the cable without removing a splice case to reach the wire or fiber within.”

(*Id.* ¶ 96) Some examples of accessible points include a pole or pedestal, the NID, feeder distribution interface, the MDF, and remote terminals. (*Id.*) SBC Wisconsin’s offering of subloops generally mirrors the UNE-Loop offerings, however Mr. Deere states that additional subloops are available through an engineering controlled splice (ECS) which allows CLECs access to the Serving Area Interface served by Remote Terminals.

Dark Fiber: Mr. Deere states that SBC Wisconsin offers dark fiber loops as both UNE-Loops and Subloops. (*Id.* ¶ 107) CLECs must order a minimum of two fiber strands but may not have more than 25% of the spare facilities in the segment requested. (*Id.* ¶ 108) CLECs must submit a “dark fiber facility inquiry, providing the CLEC’s specific point to point (A to Z) dark fiber requirements.” (*Id.* ¶ 111) Finally, SBC Wisconsin imposes some conditions on dark fiber. According to Mr. Deere, these conditions were developed with CLEC input as part of the A-AA process in Docket No. 6720-TI-160 and are known as Issue E – Dark Fiber.

Integrated Digital Loop Carrier (IDLC)/FMOD: Mr. Deere states that CLECs may request unbundled loops served by integrated digital loop carrier (IDLC) technology if facilities are available. In this instance, Mr. Deere states that SBC Wisconsin will move the requested UNE-Loop to a spare existing facility, in accordance with the Facility Modification Process (FMOD). The FMOD process was developed by SBC Wisconsin with input by CLECs during the series of prehearing conferences in Docket No. 6720-TI-160 and is designed to reduce the number and length of delays in provisioning UNE Loop requests when IDLC is present on the loop, especially when CLEC UNE orders are canceled due to “no facilities.” (*Id.* ¶ 138) The FMOD process is divided into four categories. The first is Simple Modifications where the

requested UNE is provisioned with minor work performed by SBC Wisconsin with no separate charge. The second is Complex Modifications where the requested UNE requires additional work before the loop is provisioned. Because complex work may be required, the requested due date may change but the UNE order is not canceled. The third is IDLC/RSU where the requested UNE is served via IDLC or a remote switching unit (RSU) and no spare facilities exist. The CLEC is given the option to pay additional fees for construction work and a revised due date is established. The fourth is New Build where there are no facilities in place or planned for either retail or wholesale and new construction is required. (*Id.* ¶¶ 140-148)

Finally, Mr. Deere states that SBC Wisconsin has implemented a series of performance measures to evaluate SBC Wisconsin's provisioning and maintenance for both UNEs and FMOD. (*Id.* ¶ 154-155)

Hot Cuts: Mr. Brown states that SBC Wisconsin offers competing carriers a choice of three methods for provisioning UNE-Loops with LNP including: the coordinated hot cut (CHC) process, the non-coordinated hot cut process, and the frame due time (FDT) hot cut process. (Brown Aff. ¶ 73) According to Mr. Brown, these processes were developed with CLEC input and include automatic testing and validation of Dial Tone/Automatic Number Identification. Mr. Brown states that all CHC are manually handled and require coordination between the CLEC and SBC Wisconsin. To ensure that customers do not lose service, Mr. Brown states that SBC Wisconsin has implemented a "Throwback Process" when CHC problems occur. The throwback process provides service restoration to end-users until the problem has been identified and resolved. (*Id.* ¶ 80) Finally, Mr. Brown states that a series of performance measures have been implemented to monitor SBC Wisconsin's hot cut performance.

UNE-Loops Used for Advanced Services

1. Pre-Ordering for xDSL-Capable Loops

SBC Wisconsin asserts that it complies with the FCC's requirement that RBOCs must "provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install." (SBC Wisconsin Brief, p. 57, citing the FCC's Kansas and Oklahoma 271 order) According to Ms. Carol A. Chapman, CLECs as well as SBC Wisconsin's data affiliate use the same electronic interfaces to submit loop qualification requests and receive the same information. Ms. Chapman also states that both CLECs and SBC Wisconsin's data affiliate have access to actual loop make-up information when it's available in SBC Wisconsin systems. (Chapman Aff. ¶ 15) In addition, SBC Wisconsin also provides access to archived actual loop make-up information that is stored in SBC Wisconsin databases. (*Id.* ¶ 19) If actual loop make-up information is not electronically available, CLECs may request a manual look-up. (*Id.* ¶ 20)

2. Stand Alone xDSL-Capable Loops

According to Ms. Chapman, the ordering process for xDSL-capable loops is "largely analogous to those for ordering any other UNE Loop" (*Id.* ¶ 5) Ms. Chapman states that when carriers order xDSL-capable loops, they must provide the Power Spectral Density (PAD) information for the particular service so SBC Wisconsin can inventory potentially interfering technologies. (*Id.* ¶ 32) According to SBC Wisconsin, CLECs may request an xDSL-capable loop with conditioning or take the loop "as-is." (SBC Wisconsin Brief p. 55) In accordance

with the FCC's SBC/Ameritech merger order, if the requested loop is 12,000 feet or less and not served by either DLC, any conditioning work will be performed by SBC Wisconsin at no charge. (*Id.*) All other conditioning work is performed at cost-based rates. (*Id.* p. 56)

3. Line Sharing/HFPL UNE

According to Ms. Chapman, SBC Wisconsin has implemented the necessary pre-ordering, ordering and provisioning processes for the High Frequency Portion of the Loop (HFPL) and therefore is fully compliant with the FCC's Line Sharing rules and regulations. (Chapman Aff. ¶ 58) Ms. Chapman states that the loop qualification procedures for HFPL are identical to the xDSL-capable loop procedures. (*Id.* ¶ 52) In addition, the ordering procedures for HFPL are almost identical to those used for xDSL-capable loops except that CLECs must provide the facility termination location information and the telephone number of the line to be shared when ordering HFPL. (*Id.* ¶ 60) Ms. Chapman also states that SBC Wisconsin has complied with the FCC's Line Sharing Reconsideration Order where the FCC ordered ILECs to make the HFPL of the copper portion of fiber-loops available to CLECs. (*Id.* ¶ 79) Ms. Chapman states that, "In order to access the HFPL of a copper facility in situations where the end user is served by digital loop carrier, SBC Wisconsin permits CLECs to access the copper facility at an accessible subloop access point and purchase available dark fiber or subloop feeder facilities to transport data services back to the central office." (*Id.*) According to Ms. Chapman, CLECs may access the HFPL utilizing DSLAM equipment located either at the central office or at a remote terminal or both. (*Id.* ¶ 80-81)

4. Line Splitting

Ms. Chapman states that “Ameritech [SBC] Wisconsin supports line splitting where a CLEC purchases separate elements (including unbundled loops, unbundled switching with shared transport, and the associated cross-connects for these UNEs) and combines them with their own (or a partner CLEC’s) splitter in a collocation arrangement.” (*Id.* ¶ 83) According to Ms. Chapman, a CLEC may provide both voice and data services over the xDSL-capable loop or may partner with another CLEC. Ms. Chapman also stated that SBC Wisconsin and CLECs have been meeting to develop a single line sharing request (LSR) conversion process whereby CLECs could submit a single order for line splitting when previously it was a UNE-P or line sharing arrangement. (*Id.* ¶ 90-91) Ms. Chapman states that the FCC has approved other SBC 271 applications using the same line splitting options that are available in Wisconsin. (*Id.* ¶ 92) Finally, SBC Wisconsin states that it will continue to comply with all rules and regulations regarding line splitting even though the relevant FCC orders are invalid. (SBC Wisconsin Brief p. 57)

AT&T

Mr. Mark D. Van De Water filed an affidavit on behalf of AT&T responding to SBC Wisconsin’s hot cut performance. According to Mr. Van De Water, the OSS test has demonstrated that SBC Wisconsin is not providing non-discriminatory access to unbundled loops because of its inability to adhere to its hot cut procedures. (Van De Water Reply Aff. ¶ 51) Mr. Van De Water recommends that the Commission “continue to monitor the CLEC experience using these processes to determine if Ameritech’s [SBC’s] actual performance is consistent with KPMG’s assessment.” (*Id.* ¶ 52)

Ms. Eva Fettig filed an affidavit on behalf of AT&T responding to SBC Wisconsin's position on stand-alone xDSL capable loops and line splitting. According to Ms. Fettig, SBC Wisconsin's Next Generation Digital Loop Carrier (NGDLC) technology being deployed as part of Project Pronto should be made available as unbundled network elements. (Fettig Reply Aff. ¶ 12) Ms. Fettig cites the order in Docket No. 6720-TI-161 where the Commission stated that SBC Wisconsin was required to unbundle Project Pronto and make available an end-to-end UNE offering. Ms. Fettig cites three reasons for obtaining access to these loops. First, traditional copper loops are too long to support many xDSL services. Second, access to these loops would eliminate the need for conditioning charges because Project Pronto ensures that the copper portion of the loop is less than 12,000 feet. Third, copper loops will not continue to be ubiquitously deployed in SBC Wisconsin's network. (Id. ¶ 14-15) According to Ms. Fettig, without access to the Project Pronto architecture, CLECs will be forced to collocate DSLAM equipment at remote terminals. However, Ms. Fettig states that this solution "is riddled with insurmountable logistical, technological, and economic hurdles" due to space limitations at remote terminals, obtaining rights-of-way as well as obtaining power and security related issues. (Id. ¶ 20)

Ms. Fettig also argues that SBC Wisconsin refuses to offer line splitting over the UNE-P contrary to FCC orders. According to Ms. Fettig, "Ameritech's [SBC's] position requires the UNE-P carrier to order a new loop (even if it turns out to be the existing loop) and a new switch port in every case that line splitting is sought. Inherent in this position is the certainty that every time a UNE-P customer seeks line splitting, there will be a service disconnection, there potentially will be an extended period of loss of dial tone, there will be increased change of loss

of facilities (such as working telephone number, facilities assignment), there will be increased complexity in the ordering process, and there will be increased numbers of nonrecurring service order charges.” (Id ¶ 28)

AT&T argues that its position is consistent with the AT&T/SBC Wisconsin arbitration. AT&T states that issue 34 involved whether SBC Wisconsin was required to offer line splitting to AT&T over UNE-P loops. According to AT&T, the Commission concluded that it had the authority under both federal and state law to decide these issues, including requiring SBC Wisconsin to provide the splitter as a standalone UNE. (AT&T Comments p. 39-40) However, according to Ms. Fettig, SBC Wisconsin has never clarified its procedures for line splitting or specified the rates that would be charged under various scenarios. (Fettig Aff. ¶ 30)

AT&T also filed an affidavit by Mr. James F. Henson in response to Ms. Chapman’s statement regarding the terms and conditions for line splitting and asserts that, “The issue of line splitting provides an example of uncertainty associated with the application of nonrecurring charges.” (Henson Aff. ¶ 21) Based on information provided during the Michigan line splitting collaborative, Mr. Henson asserts that “Ameritech’s [SBC’s] latest positions on the nonrecurring charges that apply in various line splitting scenarios still reflect a grossly overstated view of the work and cost associated with offering line splitting. To my knowledge, such discussions have not even begun in Wisconsin. Based on Ameritech’s [SBC’s] positions in other states, such charges, when they become known in Wisconsin, are certain to be overstated and in no way in conformance with TELRIC principles.” (*Id.*, ¶ 22)

NTD

Ms. Cindy Jones filed an affidavit on behalf of NTD stating that, “Manual work-arounds were causing serious provisioning errors. For example, reps were typing orders as Coordinated Hot Cut orders rather [sic] that Frame Due Time orders, the day of the cut the orders were not worked, NTD was not aware the order was typed wrong, and [sic] Cut Sheet would never be sent to work orders.” (Jones Aff. ¶ 14)

WCOM

According to WCOM, SBC Wisconsin does not allow line splitting. WCOM states that, “To make such a showing, Ameritech [SBC] must show that it provides line splitting through rates, terms and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.” (WCOM Comments p. 12)

Ms. Lichtenberg filed an affidavit asserting that in Illinois when WCOM wins the voice service from the end user and places the order with SBC Wisconsin to migrate only the voice service (and thus leaving the data services intact) SBC Wisconsin rejects the order. (Lichtenberg Aff. ¶ 31) According to Ms. Lichtenberg, “Ameritech [SBC] refuses to allow customers to choose their voice carrier if they also want to have an Ameritech [SBC] subsidiary provide DSL on their line.” (Id ¶ 32) Ms. Lichtenberg states that customers must either migrate their voice services to WCOM and obtain data services from another source or stay with SBC Wisconsin voice service. (Id ¶ 32)

Ms. Lichtenberg also states that, SBC Wisconsin's data affiliate refuses to offer data service when the end user purchases voice services from a CLEC due to billing limitations and other OSS issues. (Id ¶ 36) She also states that SBC Wisconsin requires end users to subscribe to its retail voice service as a requirement to obtain data services from its affiliate. (Id ¶ 36)

Ms. Lichtenberg also states that SBC Wisconsin uses a three-order LSR process for converting line sharing to line splitting when it should be using a one-order process. The three orders involve disconnection of the HFPL; reuse of the xDSL loop and an order for the unbundled local switching (ULS)-port with connecting facility assignment (CFA). Ms. Lichtenberg recommends that the Commission initiate collaboratives to resolve these issues or simply adopt the positions of CLECs that were advocated in Michigan. (Id ¶ 39)

TDS

Mr. Cox filed an affidavit on behalf of TDS arguing that SBC Wisconsin has not complied with this checklist item because of its policy regarding the removal of non-excessive bridged taps. According to Mr. Cox, prior to February 2002, TDS routinely ordered xDSL-capable loops along with conditioning. However, after February 2002, many TDS customers experienced problems with their service and it was subsequently determined that bridged taps were on the line. Mr. Cox states that TDS was informed by SBC Wisconsin that a BFR, or a contract amendment was required to remove these "non-excessive bridged taps." (Cox Aff. ¶ 97) According to Mr. Cox, SBC Wisconsin "is refusing to provide for the removal of bridged tap less than 2,500 feet, unless parties sign an interconnection agreement incorporating a trouble ticket process after the loop has been provisioned and found unable to support xDSL service." (Id ¶ 101) Mr. Cox believes that SBC Wisconsin is in violation of the FMOD policy as well as FCC

rules. According to Mr. Cox, the FCC requires SBC Wisconsin to remove any devices that diminish the capability of the loop. Mr. Cox states that these rules do not distinguish between bridged taps that are greater than 2,500 feet and those that are less than 2,500 feet. Mr. Cox also believes that since there was no advance notice to CLECs, SBC Wisconsin's approach to this issue violates the Change Management Process (Id ¶ 108-109)

Finally, Mr. Cox asserts that, "SBC/Ameritech technicians are not properly tagging the DMARC and NIDs with the necessary circuit number(s). It has been our experience that xDSL installation is delayed approximately 30% of the time because of either the lack of labeling by SBC/Ameritech technicians or the customer's error." (Id ¶ 95)

SBC Wisconsin Reply

In response to AT&T's affiant Van De Water, Mr. Brown states that his argument regarding SBC Wisconsin not offering non-discriminatory access to unbundled loops due to poor hot cut performance is premature and will be determined in Phase II. (Brown Reply Aff. ¶ 21)

In response to NTD, Mr. Brown states that cut sheets were eliminated on October 1, 2001 and were replaced with a web-based tool. Regarding other statements by Ms. Jones, Mr. Brown states that he is unable to respond due to the lack of specific examples or other evidence beyond her "anecdotal" statements. (Id ¶ 22-23)

In response to TDS, Mr. Deere states that SBC Wisconsin, "provides 'binding post' information to identify the individual loop to the CLEC." (Deere Reply Aff. ¶ 42) According to Mr. Deere, "When a technician is dispatched to a customer location, Ameritech [SBC] Wisconsin physically 'tags' the NID with a little card that has the binding post information on it." (Id ¶ 43) Finally, Mr. Deere asserts that, "Less than five percent of one- and two-line

residential and business customer premises do not have a new type of NID installed on the outside of the premises. However, all premises have some form of demarcation to separate the outside wire from the inside wire.” (Id ¶ 44)

In response to AT&T, Ms. Chapman states that contrary to Ms. Fettig’s statements, SBC Wisconsin “does offer unbundled loops where provisioned over NGDLC just as it does over traditional digital loop carrier” and in May 2002, SBC Wisconsin filed a tariff offering an “end-to-end Broadband Service UNE.” (Id ¶ 2 and 5)

Ms. Chapman states that SBC Wisconsin supports line splitting but disputes Ms. Fettig’s characterization of the issue. According to Ms. Chapman, “Ms Fettig is suggesting that Ameritech [SBC] Wisconsin should be required to offer voice CLECs a *combined product offering* that includes UNEs and non-Ameritech [SBC] Wisconsin network elements --- i.e., a data CLEC’s splitter.” (Chapman Reply Aff. ¶ 18, emphasis in the original) According to Ms. Chapman, SBC Wisconsin cannot combine elements that it does not own or possess and therefore has no right or obligation to provide them. (Id ¶ 21)

Ms. Chapman also disagrees with Ms. Fettig that service disruption is avoidable when migrating to line splitting. Ms. Chapman states that the UNE-P configuration must be separated so that the splitter may be installed between the loop and port. According to SBC Wisconsin, “Where the data CLEC provides the splitter in a line sharing arrangement, Ameritech [SBC] Wisconsin has processes in place whereby it will migrate (without any service disruption) a line sharing arrangement into a line splitting arrangement so long as the data CLEC agrees to ‘line split’ with the voice CLEC using the existing splitter.” (SBC Wisconsin Reply Brief p. 60)

Ms. Chapman also disagrees with Ms. Fettig's statement that SBC Wisconsin has not released its process and procedures for line splitting. Ms. Chapman asserts that its website, "CLEC Online, contains the procedures that CLECs should use when ordering UNEs to be used in a line splitting configuration." (Chapman Reply Aff. ¶ 25) Ms. Chapman also states that line splitting orders are not handled the same as UNE-P orders for a variety of reasons. First, the loop and port must be connected to a CLEC-owned splitter and DSLAM and therefore, the CLEC must provide SBC Wisconsin with the facility assignment for the voice service. Second, UNEs used for line splitting and UNE-P are not inventoried and maintained in the same manner. Finally, SBC Wisconsin has different performance measures for UNE-P and Line Splitting. (Id ¶ 27-29)

Ms. Chapman also asserts that WCOM's line splitting proposals are inconsistent with FCC rules. According to Ms. Chapman, WCOM's proposal "would require Ameritech [SBC] Wisconsin to offer the HFPL (high frequency portion of the loop) of a UNE loop to a second CLEC. In other words, in the situation where a voice CLEC already has leased a UNE loop from Ameritech [SBC] Wisconsin, Ms. Lichtenberg's proposal would require Ameritech [SBC] Wisconsin to sell the HFPL of that UNE loop to a separate data CLEC." According to Ms. Chapman, a CLEC leasing a UNE-loop has control over the entire loop, not just the low frequency portion of the loop. The second CLEC must enter into a voluntary line splitting agreement with the CLEC who has leased the UNE loop. (Id ¶ 31)

Ms. Chapman also states that the data CLEC has a right to purchase the loop in situations where SBC Wisconsin's voice service is disconnected. Ms. Chapman asserts that WCOM's position "would force data CLECs to engage in line splitting and provision the voice CLEC's

offering over the data CLEC's splitter without first obtaining permission from the data CLEC" which contradicts FCC's rules. (Id ¶ 33)

In response to Ms. Lichtenberg's statement that WCOM orders were being rejected in Illinois, Ms. Chapman believes that this is irrelevant since WCOM did not indicate if Wisconsin orders were being rejected. However, in response to WCOM, Ms. Chapman states that in Illinois, WCOM did not follow the business rules and obtain permission from the data CLEC to share the loop or use the data CLECs splitter. In this instance, "MCI was placing orders that would have forced the data CLEC to line split with MCI and that would have allowed MCI to use the data CLEC's network facilities without the data CLEC's knowledge or permission." (Id ¶ 43)

Ms. Chapman also states that WCOM's proposal would require SBC Wisconsin to manage the relationship between the two CLECs engaged in line splitting. According to Ms. Chapman the FCC has stated that in order for line splitting to occur, a CLEC must purchase the entire xDSL-capable loop and then must enter into a voluntary arrangement with the other CLEC. Ms Chapman states that a voluntary relationship is necessary so that complex operational issues are resolved including: inter-CLEC billing, customer care issues (e.g., which carrier bills the end user and responds to trouble reports), and facility control issues (e.g., which CLEC owns the xDSL-capable loop). (Id ¶ 42)

In response to WCOM's statement that SBC Wisconsin's data affiliate refuses to line split, Ms. Chapman states that the data affiliate would have to resolve "numerous operational difficulties" before it would agree to line split with an unaffiliated voice carrier. (Id ¶ 50)

In response to WCOM's single order issue, Ms. Chapman states that a single-LSR process for line-splitting will be implemented in August 2002. Ms. Chapman also states that a three-order process is used for converting line sharing arrangement to line splitting arrangements. According to Ms. Chapman, there is insufficient volume to warrant a one-order process. If and when CLECs enter into voluntary line splitting arrangements, Ms. Chapman states that SBC Wisconsin will discuss a more streamlined ordering process. (Id ¶ 55-57)

Ms. Chapman also defends SBC Wisconsin's "business rules that require a CLEC order to convert a line sharing arrangement to a line splitting arrangement include the connecting facility assignment (CFA) information for the data CLEC." (Id ¶ 58) According to Ms. Chapman, "if a voice CLEC can provide Ameritech [SBC] Wisconsin with the data CLEC's CFA information, Ameritech [SBC] Wisconsin can be assured that the voice CLEC has been authorized to terminate its UNE at the specified location within the data CLEC's collocation arrangement. This protects the data CLEC from any unauthorized providers terminating UNEs onto the data CLEC's network without its consent." (Id)

In response to TDS, Ms. Chapman states that SBC Wisconsin now offers a second conditioning option for CLECs – the removal of non-excessive bridged taps. According to Ms. Chapman, it is appropriate for the parties to agree on the terms of this new option before service is provided. (Id ¶ 63)

SBC Wisconsin's November 15, 2002 Filing

Mr. Deere filed a supplemental affidavit responding to interveners concerns regarding SBC Wisconsin's position on dark fiber. According to Mr. Deere, "dark fiber is provided on an as-is basis at the time the inquiry is made." (Deere Supp. Aff. ¶ 8) If dark fiber is not available,

the inquiry is returned to the CLEC and no further action is taken. Mr. Deere states that SBC Wisconsin “does not maintain a file of inquiries to allow it to perform a continuous review of newly installed or terminated fiber facilities, nor does it have a comprehensive electronic database of dark fiber inventory.” (Id) Mr. Deere asserts that each and every dark fiber inquiry is a “labor intensive largely manual process.” (Id) Mr. Deere also asserts that SBC Wisconsin has no legal obligation to notify CLECs as to when fiber is terminated. Finally, Mr. Deere states that if a CLEC is dissatisfied with SBC Wisconsin’s response, the CLEC should contact its Account Manager for a review. If they are still not satisfied, the CLEC is free to initiate the dispute resolution process outlined in its interconnection agreement. (Id ¶ 9)

Mr. John Habeeb also filed a supplemental affidavit stating that SBC Wisconsin’s data affiliate and WCOM held a meeting to discuss a line splitting arrangement. According to Mr. Habeeb, “it was agreed that WCOM would provide an outline of its business proposal to ASI/AADS, detailing the specific requirements envisioned by WCOM.” (Habeeb Supp. Aff. ¶ 5) Mr. Habeeb asserts that “ASI/AADS has not received this proposal.” (*Id.*, ¶ 6)

Ms. Carol Chapman also filed a supplemental affidavit regarding the temporary disruption of service when the existing UNE-P is separated to facilitate line splitting. According to Ms. Chapman, AT&T raised the same issue in California as part of SBC/Pacific Bell’s 271 application and AT&T’s affiant in that proceeding was Ms. Fettig, the same affiant in this proceeding. According to Ms. Chapman, Ms. Fettig’s position in this proceeding directly contradicts her position in the California proceeding. In this proceeding, Ms. Fettig argues that there should be no service disruption when a customer migrates to line splitting but in California, Ms. Fettig stated that Pac Bell’s procedures (which are the same in this proceeding), “take an

extremely short amount of time and creates no appreciable service disruption.” (Chapman Supp. Aff. ¶ 8, quoting Ms. Fetting’s CA affidavit)

WCOM’s November 15, 2002 Filing

WCOM states that the Michigan Commission recently ordered Ameritech [SBC] to “bring its line sharing and line splitting procedures and pricing into compliance with Michigan rules and orders, or face detrimental action on its Michigan 271 application.” (Nov. 15 Comments p. 6)

TDS’ November 15, 2002 Filing

TDS asserts that SBC Wisconsin is providing inaccurate or inaccessible loop qualification information via Verigate and DTI. According to TDS, SBC Wisconsin’s pre-qualification data, “lacks numerous customer addresses, chunks of data on specific loops are missing or incorrect and many times the data in the two systems for the same address are wildly different” thus making loop pre-qualification a “shot in the dark.” (TDS Supp. Comments, Att. A, p. 1) To support its assertion, TDS provided data which showed that out of 125 DSL orders, 28.8% had errors. According to TDS, SBC Wisconsin reported 100% accuracy for loop makeup information during the same period. (Id p. 2)

TDS also asserts that it has had problems with SBC Wisconsin’s sub-loop ordering and provisioning process. According to TDS, it is impossible to collocate at RT because SBC Wisconsin does not provide any information regarding the location of RTs and which customers are served by RTs. TDS asserts that, “minimal tools provided by SBC-Ameritech are inaccurate and incomplete.” (Id) According to TDS, it also experienced problems in ordering sub-loops from SBC Wisconsin. TDS states that because SBC Wisconsin was not sure if the loop should

be ordered from the host switch or the remote location, “unnecessary rejections, delays and loss of customers” occurred. (Id p. 3)

Regarding hot cuts, TDS asserts that based on current performance data, SBC Wisconsin will be unable to provision large volume of hot cuts, especially if the UNE-P is eliminated. (Id) According to TDS, “The rise of rejected orders for lack of facilities, incorrect addresses, conditioning disputes, changes is (sic) ordering processes, etc. have not been adequately addressed.” (Id)

SBC Wisconsin’s December 5, 2002 Filings

SBC Wisconsin states that, “If the splitter that was used in the line sharing arrangement is owned by the data CLEC, Ameritech [SBC] Wisconsin has procedures in place whereby voice service can be ‘migrated’ from Ameritech [SBC] Wisconsin to a voice CLEC *without* interruption.” (SBC Wisconsin Comments ¶ 86) However, “If the splitter is owned by Ameritech [SBC] Wisconsin, there are procedures in place to ‘migrate’ the existing line sharing arrangement to a line splitting arrangement, so long as one of the participating CLECs installs its own splitter and DSLAM.” (Id ¶ 87) SBC Wisconsin also states that, “It is not technically feasible to provisions (sic) xDSL-services over a UNE-P arrangement.” Finally SBC Wisconsin asserts that there is no legal basis that SBC Wisconsin provide access to the data CLEC’s splitter and DSLAM when the voice CLEC migrates voice service to its UNE-P and that SBC Wisconsin combine network elements that includes network elements from a third party without that party’s permission. (Id ¶ 92)

Norlight put forth in the collaboratives the position that SBC Wisconsin did not meet its obligation to provide or identify the location of dark fiber because it did not consider fiber

facilities placed but not terminated at one or both ends, to be dark fiber. SBC Wisconsin countered the position stating that “the FCC has held that its unbundling rules do not apply to fiber that is not terminated at both ends.” SBC Wisconsin cites the Delaware and New Hampshire 271 order to support its position.

TDS’ December 5, 2002 Filing

In response to Mr. Deere’s assertion regarding the number of premises that have the new type of NID, Mr. Cox believes that SBC Wisconsin should inform TDS on how “this information is being recorded/measures and how Mr. Deere determined this percentage.” Mr. Cox also recommends that SBC Wisconsin “should explain the basis for his calculation and the business rules for the numerator as well as the denominator for this calculation. In any event, there remain a large number of NIDs for TDS Metrocom customers that still need to be replaced in Wisconsin.” (Cox Reply Aff. ¶ 10)

AT&T’s December 5, 2002 Filing

In response to Ms. Chapman, Ms. Fettig refers to the “extensive record developed in Michigan” and concludes that SBC Wisconsin has not complied with this checklist item. (Fettig Reply Aff. ¶ 22) After the Michigan Commission ordered collaboratives, the parties presented disputed issues to the Michigan Commission on four specific migration scenarios involving UNE-P, line sharing, and line splitting. The Michigan Commission issued its order in October 2002 and concluded that Ameritech’s [SBC’s] processes and pricing had not complied with previous Michigan orders. (Id ¶ 24) Ms. Fettig states that the Michigan Commission concluded that: migration from line sharing to line splitting should occur without obtaining the data CLEC’s permission; migration of voice service should leave intact the HFPL; “new loops” should not be

required when migrating voice service from line sharing to UNE-P and; the existing loop must be used without disrupting the existing DSL service. (Id) In response, Ameritech [SBC] filed a compliance plan with the Michigan Commission to address deficiencies identified in the October order. According to Ms. Fettig, SBC Wisconsin's compliance plan did not respond to the aforementioned issues identified in the order. (Id ¶ 33-39) In addition, Mr. Henson states that, "CLECs have absolutely no idea which of the extensive array of Ameritech [SBC] Wisconsin nonrecurring charges will apply to various line splitting scenarios." (Henson Reply Aff. ¶ 7)

AT&T states that it is conducting a trial in Illinois involving line splitting with UNE-P. According to Ms. Fettig, "Of the 30 test lines AT&T has installed, it has taken us since the beginning of August of this year to order and have correctly provisioned one (1) line split account." (Fettig Reply Aff. ¶ 40) AT&T concludes that, "the record before this Commission pales in comparison to the extensive review in Michigan that yielded a determination that Ameritech [SBC] fails to offer adequately defined, workable processes for line sharing to line splitting and line splitting to UNE-P scenarios." (AT&T Comments p. 40)

Norlight's December 5, 2002 Filing

Norlight argues that SBC Wisconsin's definition of dark fiber must include unterminated dark fiber. (Norlight Comments p. 2) According to Norlight, SBC Wisconsin's definition requires that dark fiber be terminated "on both ends and is spliced in all segments from end to end." (Id p. 3) Norlight states that these restrictions do not appear in FCC rules.

Norlight filed an affidavit by Mr. Walker who states that terminating fiber, "is an inherently simple and relatively speedy task." (Walker Aff. ¶ 10) Mr. Walker also argues that by requiring fiber to be terminated, SBC Wisconsin "can unilaterally insulate every strand of

spare fiber in its network from use by a competitor by simply leaving it un-terminated until SBC/Ameritech wants to use it. Indeed, SBC/Ameritech could conceivably disconnect existing spare fiber to remove it from its definition of dark fiber.” (Id ¶ 11) Norlight also cites the FCC UNE Remand Order where the FCC distinguished unused inventory of dark fiber verses in-place fiber that can easily be called into service. Norlight concludes that dark fiber, “for which the streets have been dug and which has otherwise been deployed in all respects, but for the final connection at the end, is a far cry from ‘spools in a warehouse’ and is in fact ‘easily called into service’.” (Norlight Comments p. 3)

Norlight also argues that SBC Wisconsin does not provide adequate dark fiber information. (Id p. 5) Specifically, Norlight asserts that SBC Wisconsin does not provide, “information on the location of dark fiber in their network to competitive carriers.” (Id) According to Norlight, the only way to determine if dark fiber is available for any route is to submit an inquiry. In addition, Norlight states that there is no independent method to confirm situations where SBC Wisconsin asserts that dark fiber is not available for a particular route. Mr. Walker asserts that, “it is likely that the competitor may get a report that there is no facility available, even though there may be dark fiber a short distance away (say, 100 feet).” (Walker Aff. ¶ 13) Norlight states that effective long term network planning and network forecasting are prohibited without the location and availability of dark fiber. Finally, Norlight believes that competing carriers should have access to the underlying dark fiber information on the same basis as SBC Wisconsin has. In this regard, Norlight recommends that SBC Wisconsin, “make its fiber deployment information such as local plant location records, plat records and/or TIRKS

[Trunks Integrated Records System], available for review by competitors.” (Norlight Comments p. 7)

Time Warner Communications’ (TWC) December 5, 2002 Filing

TWC challenges SBC Wisconsin’s dark fiber definition because it “excludes a great deal of fiber that is in the ground.” (Sherwood Aff. ¶ 14) According to Ms. Sherwood, unless the fiber is terminated at both ends and spliced end-to-end, SBC Wisconsin excludes it as part of its dark fiber offering. Ms. Sherwood asserts that, “fiber is not spliced end to end until it is ready for use and Ameritech [SBC] can keep this fiber out of its dark fiber offering by not splicing it until just before it needs to use it.” (Id) In addition, Ms. Sherwood states that SBC Wisconsin charges CLECs a fee of \$70.53 to determine if dark fiber is available at a specific location. (Id ¶ 16) TWC recommends that, “a CLEC should not be required to pay another fee again to validate when, and if, dark fiber becomes available.” (TWC Comments p. 19) According to Ms. Sherwood, other ILECs make a dark fiber database available for CLECs to search the location of available dark fiber. Ms. Sherwood also states that CLECs have no process to challenge SBC Wisconsin’s assertions that no dark fiber is available. (Sherwood Aff. ¶ 17) According to Ms. Sherwood, SBC Wisconsin will not make available the records it uses to determine if dark fiber is available. TWC recommends that SBC Wisconsin be required, “to modify its procedures to permit CLECs to inspect and verify Ameritech’s [SBC’s] assertions regarding the lack of dark fiber.” (Id ¶ 18) Finally, Ms. Sherwood states that there is no process in place for SBC Wisconsin to notify CLECs when dark fiber becomes available and recommends that SBC Wisconsin be required to make a notification to carriers. (Id ¶ 19)

WCOM's December 5, 2002 Filing

Ms. Sherry Lichtenberg filed a reply affidavit on behalf of WCOM stating that since March 2002, SBC Wisconsin has rejected 780 WCOM orders in Wisconsin to migrate an end user's voice service to WCOM's UNE-P service. (Lichtenberg Reply Aff. ¶ 3) According to Ms. Lichtenberg, these migration orders are where SBC Wisconsin provides voice service to the end user who also has data services from an SBC/Ameritech data affiliate. (Id ¶ 4) According to Ms. Lichtenberg, SBC Wisconsin data affiliate has made a strategic choice not to line split with CLECs to help reduce wireline churn. (Id)

In response to SBC Wisconsin's argument that OSS changes would be required to permit line splitting with SBC Wisconsin's data affiliate, Ms. Lichtenberg asserts that SBC Wisconsin has never explained what OSS changes are necessary and what business rules and systems would require modifications. (Id ¶ 9) According to Ms. Lichtenberg, "Given this lack of information, it is impossible to discern what these problems may be." (Id)

Ms. Lichtenberg states that WCOM and SBC Wisconsin's data affiliate met to discuss a line splitting arrangement. According to Ms. Lichtenberg, "the AADS representative stated that it was 'considering' the OSS development necessary for such an offer, but reiterated that the Company's current policy was not to engage in line sharing or line splitting with UNE-P CLECs." (Id ¶ 10) Although WCOM agreed to prepare a white paper outlining its requested business relationship with AADS, Ms. Lichtenberg states that, "such a document was obviated by the detailed nature of WorldCom's proposal to SBC/Ameritech regarding this service in Michigan, and the discussion that went on at the August 2002 collaboratives in the Wisconsin 271 docket." (Id ¶ 12)

In response to Ms. Chapman's position that SBC Wisconsin cannot combine network elements that it does not own, Ms. Lichtenberg states that this is not the case with SBC Wisconsin's data affiliate since all elements are owned and controlled by SBC Wisconsin. (Id ¶ 16) Ms. Lichtenberg also states that because migrating from line sharing to line splitting with SBC Wisconsin's data affiliate is only a billing change, the splitter does not to be removed and the service does not have to be interrupted. And, "No new loop qualification process is required ... [because] the fact that the loop is capable of supporting DSL has already been established, since DSL is begin provided over the loop." (Id ¶ 16-19) According to Ms. Lichtenberg, WCOM opposes the right of SBC Wisconsin's data affiliate to drop data services merely because an end user has changed voice providers and recommends that SBC Wisconsin's data affiliate, "should be required to cooperate with CLECs to continue to offer service to customers who want to retain a combination of Ameritech-affiliate [SBC-affiliate] DSL service and CLEC voice service." (Id ¶ 8)

SBC Wisconsin's December 15, 2002 Filing

In response to AT&T's discussion of the Michigan proceeding, SBC Wisconsin states that it, "disagrees with the Michigan commission's decision, and AT&T makes no showing that any of the Michigan procedures is required by federal law, or that the existing procedures here are insufficient to comply with federal law." (SBC Wisconsin Reply Comments p. 19)

In response to TWC, SBC Wisconsin states that the Rhode Island 271 order, "did not hold that incumbents must provide access to unterminated fiber for purposes of checklist compliance." (Id p. 21) Finally SBC Wisconsin argues that CLECs have offered no legal authority requiring access to information regarding the location of dark fiber. (Id p. 22)

Docket 6720-TI-170

WCOM's December 15, 2002 Filing

In response to SBC Wisconsin arguments regarding the unbundling of the HFPL, WCOM states that the Commission, in Docket 6720-TI-161, ordered SBC Wisconsin to provide “the HFPL at no cost as a separate UNE.” (WCOM Reply Comments p. 16) In addition, WCOM states that SBC Wisconsin cites no legal authority to support its position “that Ameritech [SBC] Wisconsin cannot be required to provide the low frequency portion of the loop to a voice CLEC as a distinct unbundled network element.” (*Id*, citing SBC Wisconsin’s Comments) Finally, WCOM disagrees with SBC Wisconsin’s statement that it is not required to provide splitters under federal law. According to WCOM, the Commission ordered SBC Wisconsin to make splitters available to CLECs as part of the AT&T/SBC Wisconsin arbitration. WCOM also states that this decision was imported into the TELRIC proceeding. (*Id* p. 17)

TWC's December 15, 2002 Filing

TWC recommends that the Commission follow the lead of other state commissions regarding the availability of dark fiber. Specifically, TWC filed a copy of an exparte describing the work done by the Maine Commission that required Verizon, as a condition for 271 approval, to provide “certain documentation concerning dark fiber availability.” (TWC Reply Comments p. 2) The Maine Commission also “required Verizon to provide CLECs with written documentation and a fiber map in the event that Verizon determines that dark fiber is unavailable in response to a CLEC request.” (*Id*)

Norlight's December 15, 2002 Filing

In response to SBC Wisconsin's citation of the Delaware and New Hampshire 271 order, Norlight states that the FCC considered "whether a competitor may access sub loops at splice points, not whether unterminated dark fiber is a UNE." (Norlight Reply Comments p. 8)

In response to SBC Wisconsin's position on making dark fiber information available to CLECs, Norlight states that "SBC/Ameritech has information about dark fiber that it uses for itself but does not make available to CLECs. This is discrimination on its face." (Id p. 11)

5. Commission Recommendation

Based on the record to date, SBC Wisconsin does not comply with Checklist Item 4 with respect to two areas – dark fiber and line splitting. These are discussed in detail below. No determination is being made with regard to checklist compliance for issues of removal of non-excessive bridged tap and loop conditioning at this time.

Non-Excessive Bridged Tap and Loop Conditioning

- Is Ameritech [SBC] currently required to remove non-excessive bridged taps as defined by ANSI for loops upon request? Is a separate charge for this activity allowed?
- What impact does Ameritech's [SBC's] September 10th Petition to Reopen the Record, or, in the Alternative, Complaint Regarding Its Loop Conditioning Rates have on this proceeding?
- What impact do Ameritech's [SBC's] September 10th Comments in 6720-TI-161 [regarding the impact of the *USTA*⁸ decision] have on this proceeding?

As agreed to by the participants in the collaboratives, the Commission has noticed these disputed issues of removal of non-excessive bridged tap and loop conditioning for investigation in a separate proceeding, Docket. 6720-TI-177. Further, these issues can be addressed as part of

⁸ *United States Telecom Ass'n v. FCC*, 290F.3d 415 (D.C. Cir. 2002)("USTA")

Phase II of this docket and due to the pendency of that proceeding, no determination is made with regard to checklist compliance for this item at this time.

Dark Fiber

- What is the proper definition for dark fiber for 271 compliance?
- Is the information provided by AIT [SBC Wisconsin] to CLECs pursuant to contract or tariff regarding dark fiber adequate (e.g., location of dark fiber facilities, ordering, etc.)? If not, what additional information should be provided?
- Are CLECs required to be notified when fiber will be terminated or has been terminated?
- Is there a process for CLECs to challenge AIT's assertion that dark fiber is not available and is that process adequate?

The Commission concludes that SBC Wisconsin has a legal obligation to expand its definition of dark fiber to include unterminated fiber.

The decision of the AT&T/ Ameritech arbitration panel expanded the definition of dark fiber to include unterminated fiber and noted that where fiber segments are already in place, it is reasonable to require SBC Wisconsin to splice those fibers together. Specifically, section 9.2.3.1.1 of the AT&T / Ameritech interconnection agreement states that:

- 9.2.3.1.1 AT&T may only subscribe to Dark Fiber if "spare" fiber exists between the two endpoints specified by AT&T. Ameritech [SBC] shall splice fiber segments to create continuity between these points. AT&T shall reimburse Ameritech [SBC] for any such splices as shown in the Pricing Schedule.

The Commission concurs in the comments by Norlight and Time Warner Communications that excluding unterminated fiber allows SBC Wisconsin to control what fiber is available to CLECs.

The Commission also recommends that SBC Wisconsin provide CLECs access to the same underlying dark fiber information that SBC Wisconsin uses including but not limited to local plant location records, plat records and/or TIRKS. The Commission believes that SBC

Wisconsin's control over information regarding the location and availability of dark fiber gives SBC Wisconsin an unreasonable advantage compared to CLECs. According to TWC, this recommendation is consistent with the Maine Commission which required written documentation, including a map with direct and alternate routes and detailed information regarding fiber that is in use, spare fiber and planned construction of fiber.⁹ The FCC, in its arbitration of an interconnection agreement between Verizon Virginia and AT&T, Cox and WCOM, noted that when competitive LECs made a dark fiber inquiry, they should have access to the same information on the makeup of dark fiber as the ILECs.¹⁰

Finally, the Commission agrees that there should be an independent method to confirm situations where SBC Wisconsin asserts that dark fiber is not available for a particular route. In this regard, the Commission believes that SBC Wisconsin should, at a minimum, allow CLECs to inspect and verify records used by SBC Wisconsin to deny a request for dark fiber.

SBC Wisconsin must amend its application regarding its dark fiber offering consistent with the recommendations from Norlight and TWC. Specifically, SBC Wisconsin's dark fiber definition should include fiber that is installed but unterminated. SBC Wisconsin should also provide access to dark fiber information as requested by TWC and Norlight (e.g., TIRKS). In addition, SBC Wisconsin must implement a review process when it denies access to dark fiber. In short, SBC Wisconsin must file a compliance plan to address all three areas – modify dark fiber definition; provide information regarding the location of dark fiber and develop a process to review denied requests for dark fiber.

Line Splitting

⁹ Time Warner Telecommunications of WI, December 16, 2002, Reply Comments.

¹⁰ Virginia Arbitration Order

- WCOM has agreed to discuss with AADS/AIMS, a partnership arrangement for line splitting. Based on these discussions, the disputed issues outlined below may be removed from the list.¹¹
 1. Can the PSCW require Ameritech [SBC] to migrate a customer's voice service to a CLEC's UNE-P offering without changing the data service?
 2. If so, should Ameritech [SBC] be required to migrate a customer's voice service to a CLEC's UNE-P offering without changing the data services?
 3. In a line sharing arrangement, can the PSCW require Ameritech [SBC] to grant access to the HFPL when it is not the underlying provider of voice service?
 4. In a line sharing arrangement, is it technically feasible for Ameritech [SBC] to grant access to the HFPL when it is not the underlying provider of voice service?
 5. If so, should Ameritech [SBC] be required to grant access to the HFPL when it is not the underlying provider of voice service?
 6. Should Ameritech [SBC] be allowed to disconnect temporarily the customer's service when converting from UNE-P to line splitting?
 7. Should Ameritech [SBC] be required to implement a 1-order process for converting a line sharing arrangement to line splitting

The Commission finds that SBC Wisconsin should not reject orders for, and must allow the migration of, an end user's voice service to a CLEC's UNE-P platform when the end user also subscribes to SBC Wisconsin's data affiliate data services on the same loop.

This scenario is detailed in SBC Wisconsin's interconnection agreement with AT&T. Specifically, section 9.2.2.3.5 clearly legally obligates SBC Wisconsin to migrate the voice service to AT&T while leaving intact the data service when the data service is provided by SBC Wisconsin.

9.2.2.3.5 AT&T may provide voice service (to any customer who elects AT&T as their voice service provider) over the same loop that SBC-AMERITECH, or any data affiliate of SBC-AMERITECH or its parent company, uses to provide data services to that customer, without interruption or termination of services provided in the HFS. Where SBC-AMERITECH is not providing the splitter, SBC-AMERITECH agrees to continue to provide all existing data services in the HFS, for the term of the customer's contract, to any customer that chooses AT&T as their local service carrier for voice services and where the retail customer desires continuation of such service; provided, however, that AT&T will bill the SBC-

¹¹ The outcome of the negotiations between WCOM and AADS/AIMS has not produced resolution to these issues so they are still disputed.

AMERITECH advanced services provider no more than it was being billed by SBC- for the same service. SBC-AMERITECH and AT&T agree to immediately engage in discussions to resolve the operational issues related to pre-ordering, ordering, provisioning and billing as specifically related to **Section 9.2.2.3.5**.¹²

In addition, the Commission has previously held that SBC Wisconsin must offer splitters as ancillary equipment as part of UNE loops.¹³ This requirement, in conjunction with the AT&T interconnection agreement provision, supports the requirement that SBC Wisconsin permit the migration of voice services to the UNE-P while retaining the data service. Since SBC Wisconsin owns and controls all unbundled network elements and the data services are provided by SBC Wisconsin's affiliate, SBC Wisconsin's arguments in opposition to the CLEC requests are not valid. Further, the disputed issues may to some degree be put to rest for the other CLECs by opting into provision 9.2.2.3.5 of the AT&T interconnection agreement with SBC Wisconsin.

There is a concern on the part of the Commission that certain other orders for voice migrations are being rejected. Further, the Commission's determination that SBC Wisconsin must offer splitters as ancillary equipment as part of UNE loops in the order in Docket No. 05-MA-120, did not limit SBC Wisconsin's responsibility to provide line splitters to voice services migrations where an SBC Wisconsin affiliate is the data service provider. The relevant provision reads:

The Commission here determines that the panel correctly decided that line splitters should be treated as ancillary equipment that is part of the loop network element, and that Ameritech [SBC] should furnish line splitters to AT&T upon request.¹⁴

¹² This provision is also found by reference or inclusion in Interconnection Agreements with TDS Metrocom and TCG Milwaukee.

¹³ See the Commission's March 15, 2002 order in Docket No. 05-MA-120 at 18-21.

¹⁴ The Commission's March 15, 2002 order in Docket No. 05-MA-120 at 20.

This policy as well as operational issues associated with pre-ordering, ordering, provisioning and billing have not been thoroughly investigated in Wisconsin. The Michigan Public Service Commission, on the other hand, addressed these migration responsibilities in its October 3, 2002, Order in Case No. U-12320 (Michigan Order). Based on evidence in the record in this proceeding regarding that order, it is clear that parties have had extensive discussions regarding these operational issues in Michigan, including the filing of a compliance plan by SBC Michigan.

The Commission believes that if SBC Wisconsin can achieve an acceptable level of compliance with the Michigan Order it may narrow or close the gap in compliance with Checklist Item 4. What is missing in Wisconsin is the compliance plan filed by SBC Michigan pursuant to the Michigan Order. Without such, the Commission may require an evidentiary hearing to gauge whether the barriers to migration of voice service over line-shared and line-split loops have been sufficiently overcome to recommend to the FCC its support for approval of 271 request. Therefore, the Commission directs SBC Wisconsin to file the Michigan Compliance Plan in this docket, at which time the Commission will seek comments from any interested parties regarding the applicability of the Michigan Compliance Plan to SBC Wisconsin. Accordingly, a record will be developed on the applicability of the Michigan Compliance Plan to SBC Wisconsin as part of Phase II of this proceeding. After review of the Compliance Plan and all filed comments, the Commission will determine in Phase II of this proceeding if SBC Wisconsin's adherence to that plan would bring it into compliance with this checklist item.

Checklist Item 5 – Unbundled Local Transport

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(v) of the Act requires the applicant to provide “Local transport from the trunk side of the wireline local exchange carrier switch unbundled from switching or other services.”

2. FCC Discussion Regarding Compliance

According to the FCC, SBC Wisconsin must demonstrate that it offers both dedicated and shared transport to satisfy this checklist item. The FCC has established the following dedicated transport obligation, “(a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of RBOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services.” (VA, App. C., ¶ 53, FN 170)

For shared transport, the FCC has established the following obligation, “(a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission

facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to , customers to whom the requesting carrier is also providing local exchange service.” (Id, FN 171)

3. Disputed Issues

- Can shared transport be used for intraLATA toll without paying access charges?
- Can Ameritech [SBC Wisconsin] decline to provide the Transport UNE if the FCC decides to remove it from the UNE list?
- What impact does the *USTA* case have on this proceeding?

Dark Fiber Related Transport Issues

- What is the proper definition for dark fiber for 271 compliance?
- Is the information provided by AIT [SBC Wisconsin] to CLECs pursuant to contract or tariff regarding dark fiber adequate (e.g., location of dark fiber facilities, ordering, etc.)? If not, what additional information should be provided?
- Are CLECs required to be notified when fiber will be terminated or has been terminated?
- Is there a process for CLECs to challenge AIT's [SBC Wisconsin's] assertion that dark fiber is not available and is that process adequate?

4. Position of the Parties

SBC Wisconsin

Through SBC Wisconsin Wisconsin's brief and affidavit filed by Messer. William C. Deere and Mr. Scoot Alexander, SBC Wisconsin argues that it provides dedicated and shared transport consistent with the FCC's unbundling requirements. Mr. Deere's affidavit provides the technical overview of SBC Wisconsin's offerings while Mr. Alexander's affidavit provides the

interconnection agreements that demonstrate SBC Wisconsin's "binding terms and conditions related to these products." (Alexander Aff. ¶ 90)

Both forms of transport may be used by CLECs to transport local exchange traffic between SBC Wisconsin's switches, CLEC owned switches or a combination thereof. According to Mr. Deere, SBC Wisconsin offers dedicated transport at the following transmission speeds: DS1, DS3, OC3, OC12, and OC48. Multiplexing is also available, allowing customers to convert from lower to higher speeds and vice versa. (Deere Aff. ¶¶ 165-167). SBC Wisconsin states that all rates, terms and conditions for dedicated transport are contained in Appendix UNE and tariffs. (Id). SBC Wisconsin also offers dedicated transport in the form of Dark Fiber. In this instance, the fiber is terminated on a fiber distribution frame within the central office. According to SBC Wisconsin, there are some restrictions on the use of interoffice Dark Fiber. SBC Wisconsin may reclaim the fiber, whether or not the fiber is being used by the CLEC, upon 12 months written notice. SBC Wisconsin states that it will negotiate with the CLEC regarding the timing of the reclamation and will work with the CLEC to obtain alternative facilities, with the same bandwidth, and at the same quality without any additional cost. SBC Wisconsin must demonstrate to the CLEC that the dark fiber will be used for SBC Wisconsin's carrier-of-last resort obligations. (Id. ¶ 169)

Mr. Deere also states that shared transport is available to CLECs and when combined with unbundled Local Switching, permits CLECs to use SBC Wisconsin's existing routing tables contained in SBC Wisconsin's switches to route traffic in the same manner as SBC Wisconsin's retail service. When a CLEC purchases ULS-ST, SBC Wisconsin is responsible for all engineering, provisioning, and maintenance of the underlying equipment. (Id 161-162).

SBC Wisconsin has a series of UNE-Transport performance measures (e.g., provisioning and repair and maintenance) that are used to evaluate whether SBC Wisconsin is providing non-discriminatory access to UNE-Transport services.

Z-Tel

Through the affidavit filed by Mr. Walters, Z-Tel believes that SBC Wisconsin is not providing non-discriminatory access to shared transport. In support of its position, Z-Tel cites a January, 2002, Notice of Apparent Liability (NAL), where the FCC proposed to fine SBC over \$6,000,000 for its failure to comply with its shared transport obligations. (Walters Aff. ¶ 31). Z-Tel believes that SBC Wisconsin is wrong to assess terminating access charges on intraLATA toll calls made by CLECs using shared transport. Again citing the NAL, Z-Tel argues that the FCC “confirmed that Bell Companies must allow CLECs to provide “end-to-end” service using the shared transport UNE.” (Id ¶ 33)

WCOM

In its November 15, 2002 submission, WCOM cites the FCC’s forfeiture against SBC and specifically the statement from FCC Chairman Powell regarding SBC’s “unlawful, anti-competitive behavior.” (WCOM Comments p. 7)

Norlight

Norlight’s position regarding dark fiber transport is the same as its position regarding dark fiber loops (Checklist Item 4) and therefore is incorporated here by reference.

SBC Wisconsin’s Reply

In response to Z-Tel, SBC Wisconsin argues that the NAL is enforcing a merger condition and is not related to checklist compliance. (SBC Wisconsin Reply Brief, p. 65) Mr.

Alexander states that CLECs do in fact pay terminating access charges when sending toll traffic using shared transport because the shared transport is used in conjunction with UNE-Switches. According to Mr. Alexander, Z-Tel's "end-to-end" argument is an attempt by Z-Tel to expand the definition of shared transport to include UNE-Switches and therefore avoid paying access charges for toll services. (Id ¶ 31) Finally, Mr. Alexander states that Z-Tel may send intraLATA traffic over the same shared trunks that carry SBC Wisconsin's intraLATA toll traffic. (*Id.* ¶ 32)

AT&T's December 5, 2002 Filing

AT&T asserts that SBC Wisconsin appealed a Michigan Commission order that required it to provide the capability to carry toll traffic on shared transport at roughly the same time it was preparing affidavits for Wisconsin. (AT&T Comments p. 44) According to AT&T, even though the courts have ruled against SBC Wisconsin, they continue to challenge this issue. (Id p. 45) AT&T also states that SBC Wisconsin has made statements in the 161 Docket, stating that it may refuse to offer shared transport depending on the outcome of the FCC's Triennial Review proceeding as well as the USTA Decision. (Id)

WCOM's December 5, 2002 Filing

WCOM introduces a new issue, "Has SBC/Ameritech complied with its shared transport obligations?" According to WCOM, this issue was not included in Staff's October 1, 2002 report because it results from an October 9, 2002, FCC forfeiture order where the FCC imposed a \$6 million dollar fine on SBC Wisconsin for failure to comply with a merger condition relating to the provision of shared transport. (WCOM Comments p. 15-16) WCOM cites Chairman Powell's comments that SBC had series violations of the FCC's local competition rules and that

SBC “went out and broke the law in five different states by failing to provide shared transport to its competitors.” (Id)

SBC Wisconsin Wisconsin’s December 15, 2002 Reply Filing

In response to CLEC arguments regarding the FCC’s forfeiture order, SBC Wisconsin states that, “the penalty does not purport to enforce any checklist requirement, but instead addresses compliance with a condition of merger approval. More to the point, WorldCom does not show or even allege that Ameritech [SBC] Wisconsin is not providing shared transport for intraLATA toll *now*. While Ameritech [SBC] Wisconsin disagrees with the FCC’s decision on the merger condition, it has complied and the decision does not matter here and now.” (SBC Wisconsin Reply Comments p. 24) SBC Wisconsin has the same response to AT&T’s argument regarding the Michigan appeal but adds, “exercising one’s right to obtain judicial review can hardly be called non-compliance; to the contrary, it shows that Ameritech [SBC] Wisconsin and its affiliates work within the law when they disagree with commission decisions.” (*Id.* p. 24-25)

SBC Wisconsin also believes that any discussion regarding what SBC Wisconsin will or not do, in response to the FCC’s Triennial Review are not appropriate at this time. According to SBC Wisconsin, CLECs have expressed their views to the FCC as part of the Triennial Review and therefore it would be inappropriate to consider this issue now, before the FCC releases its order. (*Id.* p. 25)

AT&T’s December 15, 2002 Reply Filing

AT&T concludes that, “Until SBC and its affiliates have withdrawn their numerous actions in which they seek to be relieved of the obligation to allowing shared transport to carry intraLATA toll, compliance with this checklist item cannot be found.” (AT&T Reply Comments

p. 14) AT&T also disagrees with SBC Wisconsin's conclusions of law that this Commission could order UNE-Transport if the FCC removes it from its official list of UNEs. AT&T asserts that this Commission has already rejected this position in the 161 docket. (AT&T Reply Comments p. 15)

5. Commission Recommendation

The Commission does not believe that SBC Wisconsin complies with this checklist item due to its policies regarding dark fiber. SBC Wisconsin is directed to file a compliance plan to address the dark fiber issues identified under checklist item 4.

SBC Wisconsin complies with all other aspects of Checklist item 5 subject to the outcome of Phase II.

Disputed Issues

- Can shared transport be used for intraLATA toll without paying access charges?
- Can SBC Wisconsin decline to provide the Transport UNE if the FCC decides to remove it from the UNE list?

The Commission agrees with SBC Wisconsin that this is not relevant for checklist compliance.

The Commission finds that under interconnection agreements on file in Wisconsin, CLECs can use shared transport facilities for intraLATA traffic. Therefore, since shared transport does not include switching the Commission agrees that CLECs must pay access charges when using shared transport to carry intraLATA toll calls. In addition, the Commission found in Docket 05-TI-138 that it is appropriate to maintain the distinction between access and local interconnection, and accordingly, recognized their pricing differences.

The FCC is currently addressing UNE transport issues under the Triennial Review proceeding. The Commission will review this issue, in light of its state authority, if and when the FCC removes shared transport from the list of UNEs.

- What impact does the *USTA* case have on this proceeding?

This issue will be addressed in Phase II.

Dark Fiber Related Transport Issues

- What is the proper definition for dark fiber for 271 compliance?
- Is the information provided by AIT [SBC Wisconsin] to CLECs pursuant to contract or tariff regarding dark fiber adequate (e.g., location of dark fiber facilities, ordering, etc.)? If not, what additional information should be provided?
- Are CLECs required to be notified when fiber will be terminated or has been terminated?
- Is there a process for CLECs to challenge AIT's [SBC Wisconsin's] assertion that dark fiber is not available and is that process adequate?

The discussion under checklist item 4 regarding dark fiber is hereby incorporated by reference.

Checklist Item 6 – Unbundled Local Switching

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(vi) of the Act requires the applicant to provide “Local switching unbundled from transport, local loop transmission, or other services.”

2. FCC Discussion Regarding Compliance

In prior orders, the FCC has required 271 applicants to demonstrate that they provide unbundled local switching that “included line side as well as trunk side facilities, plus the features, functions and capabilities of the switch. The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC’s customers. Additionally, local switching includes all vertical

features that the switch is capable of providing, as well as any technically feasible customized routing functions.” (VA, App. C, ¶ 54)

The FCC has also determined that 271 applicants must offer equivalent access to billing information to allow competing carriers to bill for daily customer usage, exchange access and termination of local traffic. (VA, App. C, ¶ 55)

Finally, the FCC has concluded that compliance with this checklist item includes making “trunk ports available on a shared basis and routing tables resident in the BOC’s switch, as necessary to provide access to shared functionality...(and) a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier’s point of presence to a dedicated trunk port on the local switch.” (VA, App. C, ¶ 56)

3. Disputed Issues

- Can ULS be used for switching intraLATA toll traffic without incurring access charges?
- Has SBC Wisconsin removed all unlawful restrictions in its tariffs on ULS such that carriers will obtain access to all features and functions of the switch?
- May SBC Wisconsin decline to provide the Switching UNE if the FCC decides to remove it from the UNE list?
- What impact do SBC’s September 10th Comments in 6720-TI-161 have on this proceeding?
- Has SBC Wisconsin followed through on its commitment to develop a process to order RCF?

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavits filed by Mr. William C. Deere and Mr. Scott Alexander, SBC Wisconsin states that it fully complies with the requirements for this checklist and has

legally binding interconnection agreements and approved tariffs outlining the rates, terms and conditions for unbundled local switching (ULS).

According to Mr. Alexander, SBC Wisconsin's unbundled switching product provides competing carriers "all features, functions, and capabilities of the local switch ... [including] basic capabilities available to SBC Wisconsin customers, such as a telephone number, dial tone, signaling and access to 911, operator services, directory assistance and features and functions." (Alexander Aff. ¶ 97) Mr. Alexander also states that ULS includes "all vertical features resident in the switch, including custom calling, CLASS features, and Centrex-like capabilities, as well as any technically feasible customized routing, blocking/screening, and recording functions. (Alexander Aff. ¶ 97)

According to SBC Wisconsin, CLECs have access to the same local and tandem switching capabilities and functions that are available in SBC Wisconsin's network. Specifically, SBC Wisconsin states that its offerings include, "among other things, the connection between a loop termination and a switch line card; the connection between a trunk termination and the trunk card; all vertical features the switch is capable of providing; and any technically feasible routing features." (SBC Wisconsin Brief, p. 61).

According to Mr. Deere, a variety of switch ports are available including: Analog line and trunk ports; DS1 trunk port; ISDN Basic and Primary Rate Interface ports. Additional types may be requested using the Bona Fide Request (BFR) process. (Deere Aff. ¶ 197).

SBC Wisconsin also offers competing carriers "access to all call origination and completion capabilities (including intraLATA and interLATA toll calls), and the CLEC is

entitled to all revenues associated with its use of those capabilities, including access and toll revenues.” (Deere Aff. ¶ 181).

SBC Wisconsin also states that they provide all necessary information to allow CLECs to bill exchange access, toll and reciprocal compensation. Mr. Deere states that Daily Usage Files (DUF) are provided so competing carriers are able to bill and collect all access or toll revenues and reciprocal compensation charges. (Deere Aff. ¶ 181)

AT&T

Through its brief and affidavit filed by Mr. Van de Water, AT&T argues that SBC Wisconsin has not complied with this checklist item because not all features and functions of the switch have been made available to AT&T. According to AT&T, a CLASS feature known as Remote Access Call Forwarding (RACF), “allows an end user to activate Call Forwarding from another telephone (a remote phone).” (Van de Water Aff. ¶ 18.) AT&T asserts that for nine months this feature was ordered and provisioned for AT&T’s customers, but now SBC Wisconsin is rejecting these orders. (Van de Water Aff. ¶ 19) According to Mr. Van de Water, “AT&T has a number of customers who currently are able to use RACF on their UNE-P based services.” (*Id.*) According to AT&T, SBC Wisconsin “grandfathered” this service in December, 2000 and therefore no new orders will be accepted. (Van de Water Aff. ¶ 21) AT&T assumes that RCAF was withdrawn as a wholesale service because SBC Wisconsin withdrew the service from its retail offering. (Van de Water Aff. ¶ 21) AT&T also states that, “it is clear that SBC has purchased this capability from the switch manufacturers it uses, as RACF continues to be operational.” (Van de Water Aff. ¶ 22) AT&T argues that SBC Wisconsin’s policy will set a bad precedent. According to AT&T, SBC Wisconsin should not be able to limit wholesale

offerings to only those available to retail. Rather, any feature or functionality that resides in the switch should be made available to competing carriers “regardless of whether SBC chooses to offer it to its customers or not.” (AT&T Brief p. 30)

Z-Tel

Through the affidavit of Mr. Walters, Z-Tel argues that SBC Wisconsin has not complied with this checklist item because, “SBC Wisconsin places restrictions on ULS that prevent Z-Tel from using ULS to terminate certain kinds of telecommunications traffic, such as intraLATA toll calls.” (Walters Aff. ¶ 35.) Mr. Walters also states that SBC Wisconsin “refuses” to migrate remote call forwarding when Z-Tel migrates a customer to UNE-P. As a result, the customer is required to change his or her phone number in order to have Z-Tel as their local service provider. (Walters Aff. ¶ 36). According to Mr. Walters, SBC Illinois has offered to provide RCF with a migration order but no dates have been discussed.

WCOM

Through the affidavit filed by Ms. Sherry Lichtenberg, WCOM argues that SBC Wisconsin does not comply with this checklist item due to switch provisioning errors. According to Ms. Lichtenberg, SBC Wisconsin is unable to update its switch translations when a customer “PICs” to the toll carrier he has chosen in a UNE-P environment. (Lichtenberg Aff. ¶ 47) Ms. Lichtenberg also states that, “Ameritech [SBC] has failed to properly configure the switch to carry the customer’s local toll traffic on the MCI network.” (Lichtenberg Aff. ¶ 48). Ms. Lichtenberg states that in both instances, traffic is carried by the wrong carrier and frequently stays on SBC Wisconsin’s network. Ms. Lichtenberg asserts that SBC Wisconsin

does not engage in proactive monitoring to ensure accurate updates to the switch but rather waits for WCOM to identify and then notify SBC Wisconsin.

According to Ms. Lichtenberg, these errors result in the wrong carrier handling the call and in other instances, local traffic is billed as toll. In either case, Ms. Lichtenberg believes that SBC Wisconsin has not identified the root cause of these switch translation problems because the retail side of SBC Wisconsin's business is not affected. Ms. Lichtenberg concludes that because of this, SBC Wisconsin's "processes and systems discriminate against CLECs." (Lichtenberg Aff. ¶ 50). Ms. Lichtenberg states that there are many consequences associated with the misrouting of local traffic, "First, the customer is denied the local toll carrier he or she has chosen. Second, the proper local toll provider (generally MCI) loses out on the revenue associated with these calls. Third, SBC Wisconsin seeks to become enriched by the local toll revenue it charges to CLECs even though it is not entitled to that revenue. Finally, the CLEC is tacked with expending resources to audit for this type of SBC Wisconsin improper routing and billing." (Lichtenberg Aff. ¶ 55). According to Ms. Lichtenberg, SBC committed to resolving these problems by September "but they continue today." (Lichtenberg Aff. ¶ 53)

SBC Wisconsin's Reply

In response to AT&T, Mr. Alexander states that it has committed to providing access to RACF and is implementing the necessary ordering and provisioning procedures by September 2002. In addition, Mr. Alexander states that "if an end-user who currently has the grandfathered RACF migrates to a CLEC, the RACF can be migrated at that time as well. For those switches where the feature is not activated but still loaded in the switch, the CLEC may submit a bona fide request (BFR)." (Alexander Reply Aff. ¶ 34).

In response to Z-TEL, SBC Wisconsin states that like RACF, it will “enable CLECs to provide RCF functionality by purchasing an unbundled local switching port in the remote central office.” According to Mr. Alexander, SBC Wisconsin is currently working on the ordering, provisioning and billing procedures to allow RCF to migrate with a UNE-P order. (Alexander Reply Aff. ¶ 35)

In response to WCOM, SBC Wisconsin states that the two issues associated with line translation issues have been resolved since April 2002. Regarding the first issue, SBC Wisconsin states that the line translation did not work properly when a customer had changed his or her intraLATA carrier. If a problem occurred after the line translation work was complete but prior to SBC Wisconsin updating its billing records, the customer was returned to the original carrier because the repair order did not match the billing record. SBC Wisconsin asserts that this issue was resolved in October 2001. (Muhs Reply Aff. ¶¶ 8-9 and SBC Wisconsin Reply Brief pp. 67-68) Regarding the second issue, SBC Wisconsin agrees that messages were added in error to UNE-P orders thus causing problems with the line translation but also states that when informed of the problem in September 2001, it took steps to resolve it by April 2002. (Muhs Reply Aff. ¶¶ 10-12 and SBC Wisconsin Reply Brief p. 68)

Regarding routing translation issues, SBC Wisconsin states that all problems have been resolved. These problems occurred due to changes in the routing tables caused by “splitting formerly unified area codes, opening new area codes, and in other changes to local calling areas.” (Muhs Reply Aff. ¶¶ 14-16) According to SBC Wisconsin, these errors were not systemic in that they accounted for about 1% of the routing table entries. (Muhs Reply Aff. ¶ 16)

SBC Wisconsin asserts that it has been working with WCOM to understand and resolve these problems. According to Mr. Muhs, all systemic problems have been resolved. (Muhs Reply Aff. ¶ 13) Mr. Muhs believes that BearingPoint's OSS test will validate that there are no systemic switch translation problems. Although WCOM claims that they have hundreds of thousands of misrouted calls however according to Mr. Muhs, only 45 instances have been reported to SBC. (Muhs Reply Aff. ¶ 17)

SBC Wisconsin's November 15, 2002 Supplemental Filing

Mr. Alexander filed a supplemental affidavit and states that an Accessible Letter was released on November 11, 2002 that, "provided detailed information to CLECs as to the specific central office switches where RACF can be ordered, as well as references to the appropriate standard ordering procedures." (Alexander Supp. Aff. ¶ 8, FN 7)

AT&T's December 5, 2002 Filing

AT&T argues that SBC Wisconsin fails to comply with this checklist item because its retail ULS tariff violates FCC rules. According to AT&T, SBC Wisconsin's tariff "limits the features, functions and capabilities currently resident in the switch that are available to CLECs as only those features, functions and capabilities that the Company offers to its end user customers." (AT&T Comments p. 48) According to AT&T, "FCC rules require that all features the switch is capable of providing be provided as part of the unbundled local switching element, regardless of whether the Company offers these features to its retail customers." (AT&T Comments p. 48) AT&T also disputes tariff provisions regarding using the BFR process as a method used by SBC Wisconsin to deny basic switch functions to CLECs. (AT&T Comments p. 50)

AT&T also believes that SBC Wisconsin has not complied with this checklist item because SBC Wisconsin is not providing access to Advanced Intelligent Network (AIN) features (e.g., Privacy Manager) in accordance with the FCC's UNE Remand Order. According to AT&T, "Under the UNE Remand Order, SBC/Ameritech must either provide AT&T access to SBC/Ameritech's AIN features, including Privacy Manager, or provide non-discriminatory access to its SCE in order for AT&T to design, create, test, and employ its own Privacy Manager feature." (Fettig Aff. ¶ 21) "Privacy Manager is an AIN-based feature that allows customers to choose several alternatives to screen and/or reject calls from telemarketers and other callers that do not transmit identifying information." (Fettig Reply Aff. ¶ 7) According to Ms. Fettig, Privacy Manager is an enhanced version of "Anonymous Call Rejection" that Ameritech [SBC] has removed from all but 14 switches across its five state region. (Fettig Reply Aff. ¶ 17)

According to AT&T, "For its UNE-P-based market offering, AT&T currently is unable to purchase Privacy Manager along with Unbundled Local Switching, nor is it able to gain access to the SBC Wisconsin SCE without first having to traverse the BFR gauntlet and its many obstacles." (AT&T Comments p. 52) AT&T had been waiting "for months" for SBC Wisconsin to provide details on accessing the SCE which is necessary for obtaining access to AIN features. According to Ms. Fettig, SBC Wisconsin's process for this access was simply for AT&T to use the BFR process. (Fettig Aff. ¶ 9) Ms. Fettig argues that the BFR process is discriminatory for the following reasons: AT&T will be required to wait at least 90 days to obtain Privacy Manager while SBC Wisconsin retail customers can obtain it on one day notice; retail customers are not required to prepare the necessary paperwork and other procedures that are required with the BFR process and; while SBC offers Privacy Manager free of charge as a promotional offering, AT&T

can expect “significant, above-cost charge[s].” (Fettig Aff. ¶ 16) Finally, due to this free, promotional offering, Ms. Fettig asserts that “Ameritech [SBC] uses Privacy Manager as a ‘win-back’ tool.” (Fettig Aff. ¶ 19)

SBC Wisconsin’s December 15, 2002 Filing

In response to AT&T’s argument that SBC Wisconsin’s tariff restricts the availability of switch features that are not active or used, SBC Wisconsin states that while many switch features may be resident in the switch, they are pass-word protected by the manufacturer. Until SBC Wisconsin agrees to pay for the software licenses, these password-protected features cannot be activated. For this reason, SBC Wisconsin requires CLECs to use the BFR process. (SBC Wisconsin Reply Comments p. 26)

In response to AT&T’s argument regarding access to AIN features, SBC Wisconsin states that this issue is untimely since it does not appear on the disputed issues list and therefore not properly part of this proceeding. However, in response to AT&T’s argument, SBC Wisconsin states that in its UNE Remand Order, the FCC previously rejected requests that Privacy Manager be unbundled due to its proprietary nature. SBC Wisconsin also states that AT&T has access to its AIN platform via the BFR process. Using the BFR process, CLECs have access to the underlying Service Creation Environment (SCE) to design their own offerings. Finally, SBC Wisconsin asserts that CLECs had full knowledge that a BFR process was required. According to SBC Wisconsin, this was first disclosed back in May, 19, 2000 when it filed a state tariff. In addition, SBC Wisconsin discussed the use of the BFR process when it filed its initial affidavits. SBC Wisconsin states that AT&T should have raised this issue earlier if it was that important. (SBC Wisconsin Reply Comments pp. 27-28)

AT&T's December 15, 2002 Filing

In response to SBC Wisconsin's position regarding available switch features, AT&T states that the FCC confirmed in the Louisiana II Order, "that RBOCs, including SBC, are legally obligated to provide CLECs with all vertical features the switch is capable of providing, regardless of whether these features are available to Ameritech's [SBC's] retail customers, and that failure to comply 'would limit the end user's choice of vertical features to those that [SBC] has made a business decision to offer, and therefore, would stifle the ability of competing carriers to offer innovative packages of vertical features.'" (AT&T Reply Comments p. 17, citing the FCC's Louisiana II order)

5. Commission Recommendation

With the exception of RACF and RCF issues, and subject to the outcome of Phase II, SBC Wisconsin has complied with this checklist item.

SBC Wisconsin has the ability to grandfather retail services. When it does so, it makes the service unavailable to new retail customers, but allows existing customers to retain the service until such time as they chose to discontinue it. Wis. Admin. Code § PSC 168.03(1)(g) prevents resale of grandfathered services to retail customers, unless those retail customers are eligible for the grandfathered service.

However, the ability to grandfather services does not extend to removal of UNEs or services provided as part of UNE-P. SBC Wisconsin cannot unilaterally remove a functionality which is being used by CLECs, even if SBC Wisconsin is not using it for retail offerings. If a functionality is already being used, as part of UNE-based services, then the functionality is

loaded in the switch, is technologically feasible and appropriate charges are being assessed.

Therefore, CLECs may continue to ask for, and receive, the service.

The bona fide request (BFR) process is required if a switch functionality is being requested by a CLEC, but has not yet been activated by SBC Wisconsin. A BFR is necessary since SBC Wisconsin does not know what cost or technical requirements will be involved in activating the switch functionality. In the case of an existing UNE element, such as RACF, the service was already being provided. As a result, the issues of licensing costs and technical feasibility – if a service is being provided, it is technically feasible and should be priced appropriately. None of that changes if SBC Wisconsin chooses to grandfather the retail equivalent to that service. If CLECs are using a service in conjunction with UNE or UNE-P services, and SBC Wisconsin chooses to grandfather the retail service, no BFR is necessary for CLECs wishing to continue ordering the service as a UNE.

To be in compliance with this section of the checklist, SBC Wisconsin must provide RACF as described by AT&T, without requiring a BFR. This policy also applies to any other currently active switch features, and must apply to features grandfathered in the future.

The Commission also requests that SBC Wisconsin provide an update regarding the availability of processes to migrate customers with RCF as requested by Z-Tel. According to the affidavits, this process was to be made available to CLECs, but no deadline was provided. Before it can be found compliant with this checklist item, SBC Wisconsin must show that it is making timely progress in making such migrations possible.

The Commission does not accept AT&T's late filed issue, "Access to AIN/Privacy Manager." We agree with SBC Wisconsin that CLECs had full knowledge regarding SBC

Wisconsin's policy to use the BFR as early as May, 2000, yet AT&T chose not to raise the issue until reply comments. This is not a timely inclusion.

Disputed Issues

- Can ULS be used for switching intraLATA toll traffic without incurring access charges?

The discussion from checklist item 5 is hereby incorporated by reference. The Commission has maintained a distinction between local interconnection and access services since it first addressed the issue after passage of the Act, and has maintained that distinction since that time. It is reasonable to maintain that distinction in this docket.

- Has SBC Wisconsin removed all unlawful restrictions in its tariffs on ULS such that carriers will obtain access to all features and functions of the switch?

SBC Wisconsin must make all switch features available to CLECs. If the switch feature is currently active, such as RACF, then it should be made available immediately to CLECs without the use of a BFR. If the switch feature is not currently activated, and has not been activated in the past, the BFR process is appropriate. SBC Wisconsin must modify its switching UNE offering accordingly to be compliant with this checklist item.

- May SBC decline to provide the Switching UNE if the FCC decides to remove it from the UNE list?

The discussion from checklist item 5 is hereby incorporated by reference.

- What impact does the *USTA* decision have on this proceeding?

This issue will be covered in Phase II of this docket.

- SBC WISCONSIN agreed to develop a process to order RACF by the end of September, 2002.

As discussed above, SBC Wisconsin is not considered in compliance until it is providing RACF as described by AT&T.

Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

1. Statutory Requirement

47 U.S.C. 271(c)(2)(B)(vii) of the Act requires the applicant to provide "nondiscriminatory access to 911 and E911 services, directory assistance services to allow the other carrier's customers to obtain telephone numbers and operator call completion services."

2. FCC Discussion Regarding Compliance

To be in compliance with this checklist item, the applicant must demonstrate that it maintains 911 entries with the same accuracy and reliability as retail customers. The applicant must also demonstrate that, for facilities-based CLECs, it provides unbundled access to the 911 database including dedicated interconnection trunks from the CLEC switch to the 911 control office at parity with what is provided to retail customers.

47 U.S.C. § 251(b)(3) outlines additional obligations including the requirement that the BOC must provide "nondiscriminatory access to ... operator services, directory assistance, and directory listing, with no unreasonable dialing delays." The FCC has concluded that the 271 applicant must comply with all FCC regulations and requirements implementing this section. As defined by the FCC, nondiscriminatory access means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested." The FCC has

also determined where technically feasible nondiscriminatory access also applies to dialing patterns used by customers for directory assistance such as 4-1-1 and 5-5-5-1-2-1-2. With respect to operator services, the FCC has concluded that nondiscriminatory access means that customer, regardless of the carrier, must be able to access local operators by dialing 'O' or 'O plus' the telephone number. (VA, App. C, ¶ 57)

CLECs may provide their own directory assistance and operator services, or they may use a third party or they may resell the BOC's services. If a CLEC chooses to resell the BOC services, FCC rules require the BOC to brand the service with the CLEC's identity if the CLEC desires it. If the CLEC chooses to provide its own directory assistance and operator services, FCC rules require the BOC to make directory listings either by obtaining directory information on a "read-only" or "per-dip" basis from the BOC directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database." (*Id.* ¶ 58)

Finally, the FCC originally required ILECs to offer directory assistance and operator services as unbundled network elements subject to sections 251 and 252. That requirement was removed when the FCC adopted the UNE Remand Order. While TELRIC-based rates no longer apply, these services must still be offered at just and reasonable rates.

3. Disputed Issues

- Does AIT's AIN Customized Routing offering comply with FCC requirements including the *UNE Remand Order*?
- Is it necessary for CLECs to follow the BFR process to request Customized Routing other than that currently offered by AIT?
- If the BFR process is required, has WCOM properly requested and has SBC Wisconsin properly responded to WCOM's specified form of Customized Routing (e.g., over FG D trunks)?

- If WCOM requested a form of Customized Routing, is the requested form technically feasible in WI?
- Depending on the outcome of these questions, other factual/legal issues may need to be resolved (e.g., NRC charges, OSS/billing costs, etc.)
- In the event that AIT's Customized Routing offering does not comply with FCC requirements, does SBC Wisconsin offer OS/DA services at TELRIC-based rates, supported by a Commission-approved cost study?
- Is Customized Routing part of the Switching UNE, and if so, are the costs of performing the custom routing work itself recovered in the UNE switching rate?
- If Customized Routing is part of the Switching UNE, are OSS and billing costs relating to the provision of Customized Routing recovered in the UNE switching rate?

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavits filed by Mr. Eugene Valentine and Ms. Jan D. Rogers, SBC Wisconsin states that it fully complies with the requirements for this checklist.

According to Mr. Valentine, SBC Wisconsin provides access to 911 and E911 in the same manner as that provided to its own retail customers. According to Mr. Valentine, CLECs can provide 911 service directly to municipalities or may interconnect with SBC Wisconsin's existing services arrangement at the request of the governmental body. (Valentine Aff. ¶ 14) CLECs who use SBC Wisconsin's 911 service may interconnect with SBC Wisconsin using dedicated trunks, or may provide their own trunks or use a third party. Mr. Valentine states that trunking arrangements are the same for both CLECs and SBC Wisconsin.

Mr. Valentine also states that SBC Wisconsin is the "custodian" of the MSAG database however a copy of the database is provided to CLECs so they may pre-validate their end user records before submitting them. (*Id.* ¶ 20-21)

While CLECs are responsible for the accuracy of their 911 data, Mr. Valentine states that SBC Wisconsin provide CLECs with a wide variety of tools to submit, update, and correct

customer information in the 911 database in the same manner as SBC Wisconsin. (SBC Wisconsin Brief p. 64-65) SBC Wisconsin and its partner, Intrado, "detect and correct data errors for CLEC customers in the 911 databases in the same manner and by the same employees that detect and correct errors for Ameritech [SBC]Wisconsin's customers." (*Id.*) Finally, Mr. Valentine states that SBC Wisconsin has employed a variety of performance measures to ensure nondiscrimination access to its 911 services.

According to Ms. Rogers, SBC Wisconsin also fully complies with Section 251(b)(3) obligations by offering nondiscriminatory access to OS, DA and DAL to competing carriers. Ms. Rogers states that SBC Wisconsin has implemented a variety of OS and DA service arrangements for facilities-based and resale CLECs covering the following OS services:

1. Operator Services (OS), including automated call assistance and manual call assistance (including operator assistance, busy line verification, busy line verification interrupt, and operator transfer service.)
2. Directory Assistance (DA) Services, including Directory Assistance and Directory Assistance Call Completion, subscriber listing information, address and published phone numbers, and call completion.
3. Directory Assistance Listing (DAL) in bulk format; and
4. Direct Access to the DA database on a query-by-query basis.

According to Ms. Rogers, CLECs that resell SBC services may also purchase OS/DA services for resale. In this instance, OS/DA services are provided to the CLEC in exactly the same manner routed over the same trunks in the same manner and timeframe that SBC Wisconsin provides to retail customers. (Rogers Aff. ¶ 14) If the CLEC decides to provide its own OS/DA services or use a third party, SBC Wisconsin offers custom routing whereby the CLEC's OS/DA traffic will be delivered by SBC Wisconsin to a platform designated by the CLEC. Charges for resold OS/DA are based on the avoided cost discount model. CLECs using

the UNE-P may also choose to have OS/DA services provided by SBC Wisconsin or may choose to custom route to itself or a third party.

According to Ms. Rogers, consistent with the FCC's Remand Order, the rates for OS/DA are market-based priced. CLECs that are switched-based providers may choose to route OS/DA traffic to SBC Wisconsin's platform, provide the service itself or route to a third party. Switch-based CLECs that use SBC Wisconsin's services are billed at the rate contained in their contract. (*Id.* ¶¶ 16-19) SBC Wisconsin states that the UNE Remand Order no longer requires that OS and DA be offered as UNEs at TELRIC prices, provided Custom Routing is available to competing carriers. SBC Wisconsin asserts that Custom Routing is available "throughout Wisconsin and is included in Wisconsin interconnection agreements." (SBC Wisconsin Brief p. 66) In support of its position, SBC Wisconsin filed an affidavit by Mr. William Deere who asserts that the company offers competing carriers two forms of Customized Routing - Advanced Intelligent Network (AIN) and Line Class Code using either interconnection contracts or approved tariffs. The BFR process is available for CLECs who request other forms of Customized Routing. According to SBC Wisconsin, its Customized Routing products are offered to CLECs at market-based prices. Citing recent FCC 271 decisions, Mr. Deere states that SBC Wisconsin's custom routing offerings satisfy the requirements for customized routing and therefore OS/DA are not properly classified as UNEs. (Deere Aff. ¶¶ 188-192)

Ms. Rogers also states that SBC Wisconsin provides DAL information in bulk format to competing carriers that desire to provide their own directory assistance services. (Rogers Aff. ¶ 29) According to Ms. Rogers, when a CLEC requests bulk download of DAL they receive "listing downloads on a geographic statewide area or class of service basis (business or residence

or both) and receives the same listing information SBC's operators access to provide DA service." (*Id.* 29) Daily updates are provided to CLECs in compliance with FCC rules. Access to DAL information is available via "magnetic tape, cassette, or electric transmission." (SBC Wisconsin Brief p. 69)

Competing carriers may also have direct access to the same database and in the same format as used by SBC Wisconsin retail operations on a query-by-query basis. Ms. Rogers states that no CLEC has requested direct access to SBC Wisconsin's DA database. (Rogers Aff. ¶ 30) Ms. Rogers states that competing carriers access the OS/DA services using the same dialing arrangements as used by SBC Wisconsin's retail customers with no unreasonable dialing delays. According to Ms. Rogers, because OS/DA calls are processed in the order received (e.g., first in/first out) and not based on the individual carrier, SBC Wisconsin is providing OS/DA services in a nondiscriminatory manner to competing carriers. (*Id.* ¶ 32) Finally, Ms Rogers state that a series of performance measures are used to measure SBC Wisconsin's performance regarding OS/DA services.

WCOM

Through an affidavit filed by Mr. Michael J. Lehmkuhl, WCOM argues that the DAL database is a UNE and therefore should be priced according to Section 251(c)(3). (Lehmkuhl Aff. ¶ 4) According to Mr. Lehmkuhl, the FCC did not "remove DAL databases from the list of UNEs" when the UNE Remand Order was released. (*Id.*) Mr. Lehmkuhl asserts that, "Ameritech's [SBC's] monopoly control of DAL justifies a continued requirement for cost-based prices for these services and is wholly consistent with FCC guidelines." (*Id.* ¶ 14)

Mr. Lehmkuhl also states that its interconnection agreement with SBC Wisconsin contains a restriction that is no longer valid as a result of the FCC's DAL Provisioning Order, and SBC Wisconsin refuses to remove the restriction from the agreement. Instead, Mr. Lehmkuhl states that SBC Wisconsin proposed an amendment to the agreement to not enforce the restriction. (*Id.* ¶¶ 10-12.)

Through an affidavit filed by Mr. Edward J. Caputo, WCOM argues that SBC Wisconsin does not satisfy this checklist item because it has not provided WCOM with custom routing as requested by WCOM. Mr. Caputo asserts that SBC Wisconsin's custom routing solution is inadequate and therefore, WCOM has requested that custom routing using Feature Group D trunks. WCOM further argues that because its form of custom routing is not available, OS/DA should be classified as a UNE and therefore priced using TELRIC principles. (Caputo Aff. ¶ 3) WCOM also states that it has requested custom routing using Feature Group D trunks from an SBC Wisconsin affiliate, Pacific Bell and has requested it through out the entire SBC region. (*Id.* ¶ 12) Finally, citing the FCC's 271 order in the Louisiana II decision, WCOM states that the FCC has acknowledged WCOM's desired form of custom routing and states that WCOM has "raised a legitimate concern." (*Id.* ¶ 24)

SBC Wisconsin's Reply

In response to WCOM's first issue regarding the price for DAL downloads, SBC Wisconsin filed an affidavit by Mr. Chris Nations. Mr. Nations states that WCOM's citation of the FCC's First Report and Order in support of its position was superceded by the FCC's UNE Remand Order were the FCC declined to expand the definition of the OS/DA UNE to include DAL (Nations Affidavit at ¶ 5) SBC Wisconsin further states that "The section

251(b)(3) obligation to provide DAL listings in bulk downloads is not the same as a section 251(c)(3) unbundling obligation." (SBC Wisconsin Reply Brief p. 71) SBC Wisconsin cites FCC 271 orders where SBC had offered the DAL at market-based prices. Mr. Nations further states that in its comments on the FCC's Triennial Review, WCOM acknowledged that the DAL was not a UNE. (Nations Aff. ¶ 6)

In response to WCOM's issue regarding DAL restrictions, Mr. Nations states that SBC Wisconsin issued an Accessible Letter and interconnection agreement amendment in March 2001 stating that SBC Wisconsin would comply with the FCC's order and not enforce the DAL restriction.

In response to the custom routing issue, SBC Wisconsin states that no party disputes its position that it offers two forms of custom routing. According to SBC Wisconsin, the only dispute is whether SBC Wisconsin offers a special form of custom routing as described by WCOM that uses Feature Group D trunks. According to Mr. Deere, letters were exchanged between the two companies in June-July 2002. In response to WCOM's letter, SBC Wisconsin requested that WCOM follow the BFR procedures outlined its interconnection agreement and as required by the Louisiana II decision. Mr. Deere states that WCOM has yet to provide a BFR requesting its form of custom routing. Without the BFR, Mr. Deere states that SBC Wisconsin is unable to perform a technical evaluation on the proposal. (Deere Reply Aff. ¶¶ 46-47) Drawing on the experience in California, Mr. Deere responds to the technical aspects of WCOM's proposal and indicates that it might not work with all switches. (Deere Reply Aff. ¶¶ 51-56) Mr. Deere states that SBC Wisconsin's custom routing offering was found compliant by the FCC as part of the Texas 271 order. (Deere Reply Aff. ¶ 63) Finally, Mr. Deere states that in AT&T's

arbitration, the panel agreed that SBC Wisconsin custom routing was sufficient for CLEC needs. (Deere Reply Aff. ¶¶ 64-65)

WCOM's December 5, 2002 Filing

In his reply affidavit, Mr. Lehmkuhl asserts that, "there is sufficient precedent to warrant a finding that DAL is a UNE." (Lehmkuhl Reply Aff. ¶ 3) He also asserts that, "the only comprehensive source for the DAL is the ILECs." (*Id.* ¶ 6) In support of this assertion, Mr. Lehmkuhl states that, "Because the listings used by DA providers come directly from data generated by the ILEC's service order process, and since ILECs provide service to the vast majority of end users in any given territory, ILECs such as SBC Wisconsin have bottleneck control over the DAL information generated by their customers. Thus, the only comprehensive source for the DAL is the ILECs." (*Id.*)

WCOM also argues that even if the DAL is not found to be a UNE, it should still be priced using cost-based principles because SBC Wisconsin's market-based pricing is discriminatory. (*Id.* ¶ 12) Citing the FCC's 1999 Directory Listing order, WCOM states that the FCC concluded that per-query access for DAL is discriminatory because WCOM would not have the same access as SBC Wisconsin.

Regarding SBC Wisconsin's commitment not to enforce the use restriction contained in its contract, WCOM argues that, "It is not for Ameritech [SBC]Wisconsin to choose to enforce or not enforce use restrictions. Such use restrictions are legally invalid and unenforceable in the first place, and a mere amendment to the interconnection agreement agreeing to forbear from enforcing such use restrictions merely perpetuates their discriminatory nature." (*Id.* ¶ 18)

In response to SBC Wisconsin, Mr. Caputo disagrees with Mr. Deere's assertion that the custom routing issue was decided in the AT&T/Ameritech arbitration, "as this proceeding did not address WorldCom's required form of FGD custom routing, and predated the OSS Order." (Caputo Reply Aff. ¶ 7) WCOM asserts that it has already provided SBC with a "complete package of switch vendor documentation on how to accomplish such routing as well as the results of WorldCom's own lab testing of this exact routing capability." (*Id.* ¶ 8) WCOM also asserts that a BFR is not required because the FCC has concluded that custom routing must be offered as part of UNE-Switching. (*Id.* ¶ 10) WCOM also asserts that SBC Wisconsin is improperly shifting the burden of proof to WCOM and that its SBC Wisconsin's burden to develop a custom routing solution.

SBC Wisconsin's December 5, 2002 Filing

SBC Wisconsin asserts that it, "is required to provide DAL listings in bulk format pursuant to Section 251(b)(3), not pursuant to the unbundling requirements of Section 251(c)(3), and thus the TELRIC pricing rules that apply to network elements that must be provided under Section 251(c)(3) do not apply." (SBC Wisconsin Comments ¶ 155)

In response to WCOM's position that it does not have to submit a BFR for custom routing, SBC Wisconsin states that, "WorldCom wants something for nothing. It wants Ameritech [SBC]Wisconsin to develop and test an application without any advance payment and without any promise on WorldCom's part that it will purchase the capability so that Ameritech [SBC]Wisconsin can recover these costs." (*Id.* p 29)

WCOM's December 15, 2002 Reply Comments

In its Reply Comments, WCOM states that even if the Commission does not agree that the DAL is a UNE under the UNE Remand Order, WCOM argues that Section 251(b)(3) requires cost-based rates pricing for batch DAL downloads. (WCOM Reply Comments p. 22)

WCOM disputes SBC Wisconsin's position that its requested form of custom routing requires a BFR. According to WCOM, "The major flaw in Ameritech [SBC]Wisconsin's position is the fact that competitors are not required to follow the BFR process to obtain access to an existing UNE." (WCOM Reply Comments p. 19)

SBC Wisconsin's December 15, 2002 Reply Comments

SBC Wisconsin asserts that "The TELRIC methodology was not developed to implement the requirements of 'nondiscrimination' or 'just and reasonable' rates, terms and conditions for all wholesale products and services that appear throughout the 1996 Act. Rather, TELRIC was developed solely to implement the specific language of section 251(d)(1) of the 1996 Act, which requires that rates for interconnection and certain network elements be "based on the cost ... of providing the interconnection or network element." (SBC Wisconsin Reply Comments p. 31)

5. Commission Recommendation

Subject to the outcome of the of Custom Routing pricing issues which will be addressed the UNE Pricing Docket and in Phase II of this docket, SBC Wisconsin has complied with this checklist item. For reasons outlined in their filings, the Commission agrees with SBC Wisconsin regarding the pricing of the DAL. In response to WCOM's issue regarding the enforcing the use restriction, the Commission agrees with WCOM and suggests that SBC Wisconsin simple remove the provision.

Discussion and Resolution of Disputed Issues

- Does AIT's AIN Customized Routing offering comply with FCC requirements including the *UNE Remand Order*?

SBC Wisconsin currently provides custom routing in all its service areas. As a result, SBC Wisconsin's OS/DA services are not classified as UNEs per FCC order. This position is supported by the fact that the FCC has approved prior 271 applications with the same custom routing offerings. Further, this issue was addressed in two arbitrated interconnection agreements in Wisconsin: AT&T/Ameritech (05-MA-120) and TDS Metrocom/Ameritech (05-MA-123). In both cases the panel found that customized routing was adequate, and that OS should be provided as a competitive service, not as a UNE.

- Is it necessary for CLECs to follow the BFR process to request Customized Routing other than that currently offered by AIT?

SBC Wisconsin offers two forms of Custom Routing; any other form of custom routing requested by CLECs requires the submission of a BFR.

- If the BFR process is required, has WCOM properly requested and has SBC Wisconsin properly responded to WCOM's specified form of Customized Routing (e.g., over FG D trunks)?

WCOM has not properly submitted a BFR requesting its form of custom routing.

- If WCOM requested a form of Customized Routing, is the requested form technically feasible in WI?

The Commission does not have sufficient information in the record to render an opinion on this issue.

- Depending on the outcome of these questions, other factual/legal issues may need to be resolved (e.g., NRC charges, OSS/billing costs, etc.)
- In the event that AIT's Customized Routing offering does not comply with FCC requirements, does SBC Wisconsin offer OS/DA services at TELRIC-based rates, supported by a Commission-approved cost study?

As stated above, the Commission believes that SBC Wisconsin has complied with this checklist item and offers custom routing and therefore it has no legal obligation to offer OS/DA services at TELRIC-based rates.

- Is Customized Routing part of the Switching UNE, and if so, are the costs of performing the custom routing work itself recovered in the UNE switching rate?
- If Customized Routing is part of the Switching UNE, are OSS and billing costs relating to the provision of Customized Routing recovered in the UNE switching rate?

These issues are properly deferred to Phase II of this proceeding and the decisions in the UNE cost docket.

Checklist Item 8 – White Pages Directory Listings

1. Statutory Requirement

Sec 271(c)(2)(B)(viii) of the Act requires the applicant to provide “white pages directory listings for customers of the other carrier’s telephone exchange service.”

2. FCC Discussion Regarding Compliance

In previous decisions, the FCC has interpreted ‘white pages’ as, “the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.” The FCC has also interpreted the term ‘directory listings’ to mean, at a minimum, “the subscriber’s name, address, telephone number, or any combination thereof.” Finally, the FCC has determined that an applicant complies with this checklist item by demonstrating that it, “(1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provided white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.” (VA, App. C, ¶ 60)

3. Disputed Issues

- Is SBC's offering compliant with its A-AA commitment to offer a single interface for ordering UNE-Loops and directory listings?

4. Parties' Positions

SBC Wisconsin

Through its brief and affidavit filed by Ms. Robben Kniffen-Rusu, SBC Wisconsin states that it has fully complied with this checklist item. SBC Wisconsin states that all UNE-P and Resale customers are furnished with a White Page (WP) listing in the same manner (including size, font and typeface) as those provided to retail customers. (Kniffen-Rusu Aff. ¶ 3).

WP listings are also available to facilities-based CLECs on a nondiscriminatory basis (Kniffen-Rusu Aff. ¶ 4) According to SBC Wisconsin, as of February 2002, over 147,000 CLEC end users were listed in SBC Wisconsin's WP directories. (Kniffen-Rusu Aff. ¶ 4)

Appendix WP, which is included in the Generic Interconnection Agreement, contains the rates, terms and conditions by which CLECs may purchase Primary, Additional, and Foreign Listings. According to SBC Wisconsin, CLEC Primary Listings are integrated into the WP directories at no charge, while the rates for Additional and Foreign Listings are identical to the rates charged to retail customers.

Delivery of the WP directories to CLEC customers is provided in the same manner and at the same time that directories are delivered to SBC Wisconsin's retail customers. (Kniffen-Rusu Aff. ¶ 7) According to SBC Wisconsin, CLEC-specific contact information will be included in the directory at the CLEC's request. The type of CLEC information to be included is: the CLEC's installation, repair, customer service, and local sales office information, the payment

address and logo. This information is listed in the same form and format as other carriers including SBC Wisconsin. (Kniffen-Rusu Aff. ¶ 8)

SBC Wisconsin also states that it provides CLECs with ongoing education and support relative to WP directories. Web-based instruction for proper formatting of WP listings is provided to CLECs. SBC also provides instructor-led workshops regarding reading, formatting and ordering of multiple types of directory listings. (Kniffen-Rusu Aff. ¶ 9).

SBC Wisconsin states that CLECs have the option of receiving two opportunities to review the WP listings prior to publishing to verify the accuracy and completeness of their listings. The initial review is provided to CLECs at no cost. While there is a cost for a second review, it will be waived if 5% or more of the errors submitted for correction from the first review have not been corrected. (Kniffen-Rusu Aff. ¶ 17) Finally, SBC Wisconsin asserts that there are a series of performance measures that are used to track and monitor SBC Wisconsin's performance relative to this checklist item.

AT&T

Mr. Walter Willard filed an affidavit asserting that SBC Wisconsin does not comply with this checklist item because, "SBC's processes for CLECs to order and access directory listings are discriminatory on their face and are otherwise burdened with inefficient manual processing that raise the likelihood of errors and delays." (Willard Aff. ¶ 98) Mr. Willard also asserts that SBC Wisconsin is "reneging" on its commitment made to the parties as part of the Wisconsin prehearings to deploy "one integrated electronic interface ... for completing local service requests (LSRs) and directory service listing requests (DSRs)." (Willard Aff. ¶ 100) According to Mr. Willard, although SBC Wisconsin allows CLECs to send integrated LSRs and DSRs over

the EDI interface, “AAS will send edits, rejection notices, and completion notices concerning the CLEC directory orders over separate manual interfaces: via fax, phone call, or email.” (Willard Aff. ¶ 101) Mr. Willard states that this requires CLECs to maintain a separate interface with AAS when CLECs should be receiving all responses from SBC electronically.

Mr. Willard asserts that, “By providing two separate – and wholly unequal – means by which CLECs are to place directory orders, SBC is discriminating between CLECs based solely on the market-entry mechanism (UNE-P/resale verse UNE-Loop) they choose to use to enter the local market.” (Willard Aff. ¶ 103) According to Mr. Willard, CLECs that enter the local market using UNE-P/resale send and receive all responses, including directory listings, over the EDI interface, similar to SBC retail. However, Mr. Willard states that this is not true for facilities-based CLECs because all responses are provided by AAS over a separate, manual interface. (Willard Aff. ¶ 102)

Mr. Willard also asserts that SBC Wisconsin discriminates in the way CLECs access directory listings inquiries. According to Mr. Willard, “for its own retail customers SBC accesses its directory listings from its own databases as part of its customer service records. Similarly, CLECs using UNE-P or resale access their customers’ directory listings directly from SBC’s databases via a pre-ordering EDI functionality. However, SBC does not provide directory-listing inquiries for facilities-based CLECs ... Instead, CLECs that need access to these listings are required to process their inquiries through a separate EDI interface with AAS.” (Willard Aff. ¶ 105) Mr. Willard also states that in Illinois, SBC committed to provide directory listing inquiries over one interface to all CLEC and SBC requests. This commitment was scheduled for September, 2002 but slipped to November, 2002. (Willard Aff. ¶ 106)

SBC Wisconsin Reply

SBC Wisconsin filed a reply affidavit by Mr. Mark Cottrell to rebut AT&T. In response to AT&T, Mr. Cottrell states that SBC Wisconsin has fully complied with its commitment made during the prehearing. Mr. Cottrell states that the processing of directory listing orders is not discriminatory since, “switch-based CLECs are able to access through Ameritech’s EDI ordering interface all the same directory listings ordering functionality previously available only through AAS’ EDI interface.” (Cottrell Reply Aff. ¶ 44) According to Mr. Cottrell, “the initial submission of an order, and the initial edit and error correction of that order, are done via the Ameritech [SBC] Wisconsin EDI interface. Once AAS receives an order, there is a limited possibility that an error will be encountered that prevents the completion of processing. This is true of Ameritech [SBC] retail orders, CLEC UNE-P and resale orders, as well as facilities-based CLEC orders.” (Cottrell Reply Aff. ¶ 49) Mr. Cottrell states that any responses to CLECs from AAS are not burdensome and that “fax inquiries are used by AAS to notify CLECs of errors or questions about their listing orders, and are sent to AT&T on less than 1% of their facilities-based orders.” (Cottrell Reply Aff. ¶ 50)

Mr. Cottrell also asserts that SBC Wisconsin directory listing inquiry process is not discriminatory. According to Mr. Cottrell, “The only directory listing information contained in ... [Ameritech’s [SBC’s] consumer service record database] ... is that retained from orders for directory listings provided by Ameritech [SBC] in conjunction with TN-based service offered by Ameritech [SBC].” (Cottrell Reply Aff. ¶ 53) Mr. Cottrell also states that directory listings offered by facilities-based CLECs are held in AAS’ databases and not SBC’s consumer service record database. Mr. Cottrell asserts that CLECs may use AAS’ GUI listing inquiry interface to

view all AAS listings. Mr. Cottrell states that by November 2002, SBC Wisconsin “agreed to integrate some of the directory listing inquiry functionality provided by AAS’ GUI listing inquiry interface into Ameritech’s [SBC’s] pre-ordering interface.” (Cottrell Reply Aff. ¶¶ 56)

SBC Wisconsin states that, “it bears noting that the FCC has never held that RBOCs must provide a single interface for directory listing and service orders to satisfy checklist item 8 or any other item.” (SBC Wisconsin Brief p. 73)

SBC Wisconsin December 15, 2002 Reply Comments

According to SBC Wisconsin, “In response to an action item at the collaborative regarding rejection notices for incorrect directory listings submissions, SBC Wisconsin’s publishing affiliate is willing to conduct a trial with AT&T to develop a process for e-mail notification as opposed to the current fax process. We ask only that AT&T provide an operational contact to coordinate its side of the trial.” (SBC Wisconsin Reply Comments p. 32)

5. Commission Recommendation

At this time, and subject to the outcome of Phase II, the Commission tentatively concludes that SBC Wisconsin has fully complied with Checklist Item 8. No party has challenged SBC Wisconsin’s evidence regarding its provisioning of White Pages Directory Listing. Specifically, no party challenges SBC Wisconsin’s assertion it provides non-discriminatory treatment to CLECs regarding production and delivery of White Pages Directory Listings. AT&T challenges the adequacy of the interface for directory listing related transactions, however the Commission agrees with SBC Wisconsin that a single interface for directory listings is not required for 271 compliance.

The Commission's conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting three months of performance data.

Checklist Item 9 – Numbering Administration

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(ix) of the Act requires SBC Wisconsin to provide “...nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers.” This requirement applies “until the date by which telecommunications numbering administration guidelines, plan, or rules are established.” After this date, the carrier must comply with any guidelines, plan or rule.

47 U.S.C. § 251(e)(1) states that, “The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.”

47 U.S.C. § 251(e)(2) states that, “The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”

2. FCC Discussion Regarding Compliance

In prior 271 orders, the FCC has required a showing that the 271 applicant has complied with all industry numbering administration guidelines and FCC rules which require that

competitive carriers have access to telephone numbers on the same basis as the incumbent LEC (47 C.F.R. Sect. 51.217(e)(i)). (VA, App. C, ¶ 61)

3. Disputed Issues

There were no disputed issues raised by the parties during the collaboratives or in various filings made before the Commission regarding this checklist item.

4. Parties Positions

Through its brief and affidavit filed by Mr. Jeffery Mondon, SBC Wisconsin states that it has fully complied with all number administration requirements. SBC Wisconsin states that until March 1999, it served as the Central Office Code Administrator for the Ameritech region and provided non-discriminatory access to telephone numbers to all carriers using industry-adopted procedures. On March 29, 1999, this responsibility was transferred to NeuStar (formerly Lockheed Martin) and SBC Wisconsin has had no responsibility for number administration since then. (SBC Wisconsin Brief p. 72)

5. Commission Recommendation

Based on the information provided in the record, the Commission concludes that SBC Wisconsin has fully complied with Checklist Item 9. SBC Wisconsin provided non-discriminatory access to telephone numbers for all carriers up to the point this function was transferred to a neutral third party. More importantly, no party challenges SBC Wisconsin's assertion by claiming that SBC Wisconsin did not provide non-discriminatory access to telephone numbers.

Since this checklist item is not part of the OSS third party test and has no TELRIC cost components, there are no Phase II issues. Therefore, the Commission concludes that SBC Wisconsin has complied with this checklist item.

Checklist Item 10 – Databases and Associated Signaling

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(x) of the Act requires the applicant to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”

2. FCC Discussion Regarding Compliance

In reviewing prior 271 applications, the FCC has required RBOCs to “demonstrate that it provided requesting carriers with nondiscriminatory access to: ‘(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)’ ... (and) to design, create, test and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).” (VA, App. C, ¶ 62)

The FCC has defined ‘call-related databases’ as “databases other than operational support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications services.” This list of databases includes but not limited to: LIDB, the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases. However, as a result of the UNE Remand Order, this

list has been expanded to include: the CNAM database and the 911 and E911 databases. (VA, App. C, ¶ 62)

3. Disputed Issues

Caller ID

- Are there systemic errors in the CNAM database causing Caller ID errors?
- If so, do the systemic errors call into question the accuracy of the CNAM database and the delivery system for Caller ID.

LIDB

- What is the proper pricing for LIDB when used for (a) local and (b) toll services?

CNAM

- Is the CNAM database a UNE?
- Must SBC offer CLECs access to a complete batch download of SBC's CNAM database at TELRIC-based rates for purposes of 271 compliance?
- Do costs of per query CNAM access make SBC's "per query access only" CNAM offering discriminatory?
- Depending on the outcome to these questions, other factual/legal issues may need to be resolved (e.g., Commission-approved TELRIC rates for providing complete batch download access to the CNAM database).

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavits filed by Mr. William C. Deere and Mr. Scott Alexander, SBC Wisconsin asserts that it fully complies with the requirements for this checklist item. SBC Wisconsin states that it has legally binding interconnection agreements and approved tariffs containing the rates, terms and conditions for services outlined for this checklist item.

Mr. Deere states that competing carriers have nondiscriminatory access to SBC Wisconsin's Signaling System 7 (SS7) services via the SS7 Interconnection Service agreement for call routing and completion. This agreement contains the rates, terms and conditions for competing carriers to access SBC Wisconsin's signaling links and signal transfer points. Mr. Deere also states that SBC Wisconsin provides access to its SS7 network via tariffed services.

Per SBC Wisconsin's tariff, competing carriers access the SS7 network using DNALs and a dedicated Signal Transfer Point (STP) port for carriers with their own STPs and/or SSPs. (Deere Aff. ¶ 231-233)

According to Mr. Deere, competing carriers have nondiscriminatory access to the following call-related databases: AIN database; the Toll Free Calling/800 database; unbundled access to the same LIDB and CNAM functions used by SBC Wisconsin's retail operations; and SBC Wisconsin's LIDB Service Management System, known as the OSMOP. (Deere Aff. ¶ 239)

Mr. Deere states that SBC Wisconsin provides competing carriers access to the 800 database to allow for carrier identification required to properly route the call. According to Mr. Deere, SBC Wisconsin's 800 Service is available to competing carriers in the same manner as provided by SBC Wisconsin to its retail customers. Mr. Deere also states that SBC Wisconsin offers three vertical features with 800 Service. (Deere Aff. ¶ 245-247) SBC Wisconsin's 800 database supports the following types of toll free calls "800, 888, 877, and 866 [855, 844, 833, 822, when available]." (Deere Aff. ¶ 242)

According to Mr. Deere, competing carriers have the same access to the LIDB and CNAM databases as SBC Wisconsin's retail customers. If they choose, competing carriers may access these databases using the same SS7 facilities as used by SBC Wisconsin, they may provide their own SS7 facilities, or they may use a third party. (Deere Aff. ¶¶ 261- 263)

WCOM

WCOM raises three issues related to this checklist item. The first is whether SBC Wisconsin's LIDB restrictions are reasonable; the second is whether SBC Wisconsin's CNAM

database is a UNE and therefore should be priced using TELRIC-based rates and; third, whether SBC Wisconsin's CNAM database is accurate.

Through the affidavit filed by Mr. Michael J. Lehmkuhl, WCOM argues that SBC Wisconsin, "limits WorldCom's use of its LIDB database as a UNE only in those cases where WorldCom would use it for the provision of local service." (Lehmkuhl Affidavit ¶ 65) Mr. Lehmkuhl argues that such a restriction is discriminatory because the Telecommunications Act of 1996 does not limit the use of UNEs to only local services. (Lehmkuhl Affidavit ¶ 66) By transferring its LIDB database to SNET DG, Mr. Lehmkuhl believes that SBC Wisconsin is attempting to avoid making the LIDB database a UNE. (Lehmkuhl Affidavit ¶ 68)

WCOM asserts that the CNAM is a UNE and therefore recommends that SBC Wisconsin be ordered to provide access to the CNAM database in the same manner that SBC Wisconsin accesses the database. Currently, WCOM obtains access to the CNAM database on a per-query basis, but WCOM believes that SBC Wisconsin has full download or batch access to the database. According to Mr. Lehmkuhl, it is discriminatory to deny CLECs the same access that SBC Wisconsin enjoys. According to Mr. Lehmkuhl, SBC Wisconsin owns the database and therefore is able to "access, manipulate, or use the database any way it likes." (Lehmkuhl Aff. ¶ 32) WCOM would like the same opportunity so as to minimize its cost, have more control over the quality of the service it offers customers and develop "innovative and competitive offerings." (Lehmkuhl Affidavit ¶ 43)

Finally, WCOM believes that SBC Wisconsin's data contained in the CNAM database is not accurate and, therefore, the wrong information is displayed on Caller ID terminals. This is detrimental to WCOM's customers. In support of this position, Mr. Lehmkuhl provides two

examples of Caller ID errors from Illinois. (Lehmkuhl Affidavit ¶ 55-56) According to WCOM, SBC Wisconsin has refused a system-wide solution and prefers to address these errors one-at-a-time. (Lehmkuhl Aff. ¶ 60)

SBC Wisconsin's Reply

In response to WCOM, Mr. Deere from SBC Wisconsin states that its LIDB restrictions are justified. According to Mr. Deere, WCOM may use the LIDB for both local and toll purposes. WCOM must pay TELRIC-based prices when LIDB is used for local traffic and must pay access-based rates when it is used for toll traffic. (Deere Reply Aff. ¶ 92) According to Mr. Deere, this does not limit a CLEC's ability to use the LIDB for either local or toll services, but only requires that the CLEC must pay the appropriate rate. (Deere Reply Aff. ¶ 96) According to Mr. Deere, "UNEs cannot be uniformly substituted for services purchased from the access tariff." (Deere Reply Aff. ¶ 93) Mr. Deere also states that SBC Wisconsin did not transfer the LIDB to SNET but rather when SBC Wisconsin's platform became obsolete and discontinued by the manufacturer, SBC Wisconsin decided to purchase LIDB from SNET. Therefore, SBC Wisconsin accesses the LIDB database in exactly the same way as competing carriers. (Deere Reply Aff. ¶ 97) Finally, Mr. Deere states that other SBC 271 applications, which involved similar LIDB provisions, have been approved by the FCC. (Deere Reply Aff. ¶ 94)

Regarding WCOM's position on the bulk downloads of the CNAM database; Mr. Deere states that competing carriers and SBC Wisconsin access the database on the same basis. (Deere Reply Aff. ¶ 67) In addition, Mr. Deere, states that "the FCC has never held that ILECs must unbundle the CNAM database on a bulk basis and just hand over all the contents." In support of his position, Mr. Deere cites the following excerpt from the FCC's UNE Remand Order, "Thus,

we require incumbent LECs upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network.” (*Id.* ¶ 69) Using this language, Mr. Deere concludes that SBC Wisconsin must provide unbundled “access” to the database on a per-query basis and not unbundle the database itself. Finally, Mr. Deere states that 271 approval has been granted multiple times by the FCC without providing batch downloads of the data from the database. (Deere Reply Aff. ¶ 71)

Regarding WCOM’s position on errors in the Caller ID database, Mr. Deere states that WCOM is unable to cite any errors in Wisconsin and the only two errors identified are from Illinois. (Deere Reply Aff. ¶ 86) According to Mr. Deere, the two errors discovered in Illinois have been resolved between the carriers. (Deere Reply Aff. ¶ 87) Finally, Mr. Deere states that the two errors identified in Illinois do not suggest any systemic problem with the CNAM database as suggested by WCOM. (Deere Reply Aff. ¶ 91)

WCOM’s November 15 and December 5, 2002 Filings

In response to Mr. Deere’s argument that CLECs and SBC Wisconsin have the same form of per query access, Mr. Lehmkuhl believes that this is a “red herring” and that full bulk download access is the only way for WCOM to have the same access that SBC Wisconsin has. (Lehmkuhl Reply Aff. ¶ 21) Also in response to Mr. Deere’s position regarding direct access to the CNAM database over the SS7 network, WCOM argues that it “is not asking for direct access through interconnection at the SS7 network’s Signal Transfer Points (STPs), it is asking for nondiscriminatory access through a copy of the database with associated updates, the same way Ameritech [SBC] provides DAL.” (Lehmkuhl Reply Aff. ¶ 27) Finally, WCOM states that

since August 2002, SBC Wisconsin has implemented a batch download of the CNAM database and therefore “cannot contend that it is technically infeasible” to implement it. (WCOM Nov. 15 Comments p. 7)

In response to Mr. Deere’s reply affidavit regarding errors in the CNAM database, WCOM acknowledges that it does not have specific examples of errors in Wisconsin. According to WCOM however, SBC’s systems are region-wide and therefore, errors in one state “would indicate a similar problem in other states.” (Lehmkuhl Reply Aff. ¶ 36) WCOM concludes that, “Because SBC does not clean ported numbers from all of its systems databases (e.g., billing), Ameritech’s [SBC’s] CNAM look-up system continues to recognize the ported number as a native telephone number and directs the CNAM query to Ameritech’s [SBC’s] own CNAM database instead of directing the query to an outside database.” (Lehmkuhl Reply Aff. ¶ 37)

In response to SBC Wisconsin’s position on LIDB use restrictions, WCOM argues that FCC rules prohibit this type of restriction because CLECs are allowed to provide exchange access services to themselves. (Lehmkuhl Reply Aff. ¶ 38) WCOM also states that this type of restriction has the effect of denying access to the UNE altogether because the bulk of LIDB is used to validate toll calls. (Lehmkuhl Reply Aff. ¶ 39) Finally, WCOM asserts that “Ameritech [SBC] Wisconsin’s placement of ownership and control of the LIDB with SNET DG violates the *ASCENT* order, which found that ‘to allow an ILEC to sideslip (*sic*) Section 251(c)’s requirements by simply offering telecommunications services through a wholly-owned affiliate seems to us a circumvention of the statutory scheme” (WCOM Dec. 5th Comments p. 33, citing the *ASCENT* decision).

SBC Wisconsin's December 15, 2002 Filing

According to SBC Wisconsin, the real issue regarding access to the CNAM “is that WorldCom want to download the entire contents of Ameritech [SBC] Wisconsin’s CNAM database *en masse* as a ‘batch’ file, rather than access that database using its switch on a per-call ‘query’ basis.” (SBC Wisconsin Reply Comments p. 32) SBC Wisconsin asserts that, “The FCC has never required incumbents to hand over in bulk all the data contained in CNAM; rather, its rules require incumbents to allow CLEC switches (and CLECs using Ameritech [SBC] Wisconsin switches) to query that database for information through the signaling network.” (SBC Wisconsin Reply Comments pp. 32-33) Finally, SBC Wisconsin concludes that, “WorldCom is soldiering a minority position on a novel interpretive issue that does not affect checklist compliance.” (SBC Wisconsin Reply Comments pp.32-33.)

WCOM's December 15, 2002 Filing

According to WCOM, nothing in the FCC’s rules “limits Ameritech [SBC] Wisconsin’s CNAM obligations to per-query access.” (WCOM Reply Comments p. 24) WCOM asserts that, “for purposes of per-query access, such access to the CNAM database must be through the STP, and not at the Service Control Point (SCP).” (WCOM Reply Comments p. 25) WCOM also asserts that the term “direct access” used by the FCC in its First Report and Order “does not refer to bulk download of the CNAM database, as Ameritech [SBC] Wisconsin insinuates, but rather to direct access at the SCP, as opposed to through interconnection at the STP.” (WCOM Reply Comments p. 25) WCOM also asserts that, “neither the [FCC] rule nor the First Report and Order addresses the issue of the bulk download of the CNAM database via the File Transfer Protocol (FTP) being used in Michigan.” (WCOM Reply Comments p. 25) WCOM states that

“it is not seeking bulk downloads at either the STP or SCP.” (*Id.* p. 26) Finally, WCOM cites the FCC’s order requiring bulk downloads of the DAL as being, “equally persuasive in the CNAM context.” (WCOM Reply Comments p. 25)

5. Commission Recommendation

Subject to the outcome in Phase II, SBC Wisconsin complies with this checklist item.

Disputed Issues

Caller ID

- Are there systemic errors in the CNAM database causing Caller ID errors?
- If so, do the systemic errors call into question the accuracy of the CNAM database and the delivery system for Caller ID.

The Commission agrees with WCOM that Caller ID errors in Illinois are relevant to Wisconsin due to the regional nature of the database. This point was not disputed by SBC Wisconsin. However, the Commission agrees with SBC Wisconsin that two errors are not sufficient evidence to indicate a systemic problem that would find SBC Wisconsin not in compliance with this checklist item.

LIDB

- What is the proper pricing for LIDB when used for (a) local and (b) toll services?

The Commission agrees with SBC Wisconsin that LIDB used for toll services should be priced using access rates and not TELRIC rates. In its order dated July 3, 1996 in docket 05-TI-138, the Commission found it appropriate to maintain the distinction between access and local interconnection. While it has attempted to narrow the pricing differences between those services, where possible, the Commission has maintained that distinction. A separate pricing structure for database access, with one price for access to the database for local purposes and a separate pricing structure for access purposes is consistent with that finding.

The FCC has approved a LIBD policy identical to SBC Wisconsin's in other 271 applications and this indicates that SBC Wisconsin's restrictions are not in violation of this checklist item.

CNAM

- Is the CNAM database a UNE?
- Must SBC Wisconsin offer CLECs access to a complete batch download of SBC's CNAM database at TELRIC-based rates for purposes of 271 compliance?
- Do costs of per query CNAM access make SBC Wisconsin's "per query access only" CNAM offering discriminatory?
- Depending on the outcome to these questions, other factual/legal issues may need to be resolved (e.g., Commission-approved TELRIC rates for providing complete batch download access to the CNAM database) in Phase II.

The Commission agrees with SBC Wisconsin that the CNAM is not a UNE and therefore WCOM is not entitled to bulk downloads of the CNAM database. SBC obtained 271 approval with these provisions and therefore the FCC must have concluded that they did not violate any 271 requirement.

Checklist Item 11 – Number Portability

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(xi) of the Act requires the applicant to provide "...interim number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible." This requirement applies until the FCC issues regulations pursuant to Section 251 to require number portability. After the date, the applicant must comply with all regulations.

47 U.S.C. § 251(b)(2) imposes the following number portability obligation on all local exchange carriers, “The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”

47 U.S.C. § 251(e)(2) describes the cost recovery obligation and states that, “The cost of establishing telecommunications number administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”

2. FCC Discussion Regarding Compliance

Pursuant to the above statutory requirements, the FCC initially required carriers to implement “interim number portability” which was eventually replaced with “permanent number portability.” The FCC also established guidelines for a competitively neutral cost recovery mechanism for both interim and permanent number portability.

Applicants must demonstrate compliance with these FCC requirements. (VA, App. C, ¶ 63)

3. Disputed Issues

There were no disputed issues raised by the parties during the collaboratives or in various filings made before the Commission regarding this checklist item.

4. Parties Positions

SBC Wisconsin

Through its brief and affidavit filed by Mr. Jeffery Mondon, SBC Wisconsin states that it has fully complied with all number portability requirements. According to Mr. Mondon, SBC Wisconsin has adhered to the technical, operational, architectural and administrative

requirements established by the FCC for both LNP deployment and cost recovery. Specifically, Mr. Mondon states that SBC Wisconsin has deployed Local Number Portability (LNP) in 100% of its exchanges and has had an effective tariff, outlining the rates, terms and conditions for LNP cost recovery, on file with the FCC since July 1999. (Mondon Aff. ¶ 5). According to SBC Wisconsin, over 268,000 telephone numbers have been ported through January 2002. (Mondon Aff. ¶ 5)

SBC Wisconsin states that the Number Portability appendix of the Multi-State Generic Interconnection Agreement contains the number portability provisions. According to SBC Wisconsin, many carriers have binding contracts with this appendix including; Level 3, Bullseye Telecom and Century. (Mondon Aff. ¶ 22).

According to SBC Wisconsin, there are a series of performance measures that are used to track and monitor SBC Wisconsin's performance relative to this checklist item.

AT&T

While AT&T did not file any affidavits or address this issue in its briefs, AT&T did provide supplemental information as part of its November 15, 2002 filing. Specifically, AT&T provided information regarding this checklist item that appeared in SBC's 271 application in California. According to AT&T, due to various number portability problems uncovered during its 271 proceeding, the California Commission "ordered SBC to implement a mechanized NPAC [Number Portability Administration Center] check as a precondition to any ultimate finding that the company satisfied Checklist Item 11." (AT&T Supp. Filing, p. 5) AT&T also states that, "The CPUC found that a mechanized NPAC check would help ensure that customers migrating

from Pacific Bell to a CLEC will be able to retain their existing telephone number without impairment of quality, reliability, or convenience.” (AT&T Supp. Filing, p. 5)

5. Commission Recommendation

At this time and subject to the outcome of Phase II, the Commission tentatively concludes that SBC Wisconsin has fully complied with Checklist Item 11. No party has challenged SBC Wisconsin’s evidence regarding its implementation of LNP or its cost recovery tariff. While AT&T provided information from the California 271 proceeding, AT&T does not assert that such problems exist here in Wisconsin. However, the Commission’s conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting 3 months of performance data.

Checklist Item 12 – Local Dialing Parity

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(xii) of the Act requires the applicant to provide “nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”

47 U.S.C. 251(b)(3) outlines the dialing parity obligations for incumbent local exchange carriers. Specifically, ILECs have the duty to, “provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers...with no unreasonable dialing delays.”

47 U.S.C. § 153(15) defines dialing parity as, “a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers

have the ability to route automatically, without the use of any access codes, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).”

2. FCC Discussion Regarding Compliance

To be in compliance with this checklist item, 271 applicants must adhere to FCC rules implementing Section 251(b)(3). Specifically, “customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.” Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s.” (VA, App C, ¶ 65)

3. Disputed Issues

The parties did not identify any disputed issues relative to this checklist item in either the collaboratives or in filings with this Commission.

4. Parties Positions

SBC Wisconsin

Through its brief and affidavit filed by Mr. William C. Deere, SBC Wisconsin states that it fully complies with the requirements for this checklist.

According to Mr. Deere, SBC Wisconsin’s interconnection arrangements do not require competing carriers to use access codes or additional digits to complete local calls to SBC Wisconsin customers. Likewise, SBC Wisconsin customers are not required to use access codes or dial additional digits when placing local calls to CLEC customers. Finally, because CLEC switches are connected to SBC Wisconsin’s network in the same manner as SBC Wisconsin

connects its own switches, SBC Wisconsin argues that there are no build-in delays. (Deere Aff. ¶ 284)

CLECs did not provide any comments regarding this checklist item.

5. Commission Recommendation

At this time and subject to the outcome of Phase II of this docket, the Commission tentatively concludes that SBC Wisconsin has fully complied with Checklist Item 12. No party has challenged SBC Wisconsin's evidence regarding its assertion that it provides dialing parity consistent with the Act and FCC rules. However, the Commission's conclusion is tentative at this time and will be made final after a thorough review of the OSS third party test and the supporting three months of performance data.

Checklist Item 13 – Reciprocal Compensation

1. Statutory Requirement

47 U.S.C. § 271(c)(2)(B)(xiii) of the Act requires the applicant to provide "reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."

252(d)(2) contains the statutory provisions regarding the charges for the transport and termination of traffic. Specifically, this section states that "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

2. FCC Discussion Regarding Compliance

Carriers seeking 271 approval must comply with all aspects of this checklist item.

3. Disputed Issues

- After the FCC's ISP Order, to what extent do CLECs have the right to opt-into reciprocal compensation provisions in interconnection arrangements with AIT?
- Is SBC Wisconsin required to state whether or not it elects the reciprocal compensation rate cap described in the FCC's ISP Reciprocal Compensation Order before it gains its 271 approval?
- Are reciprocal compensation provisions in existing interconnection agreements, which may or may not rely on the methodology established prior to the Commission's decision in 05-TI-283, sufficient for 271 compliance given the Federal District Court Decision vacating the PSCW's decision in 05-TI-283?
- Are AIT's bifurcated reciprocal compensation rates developed in the 6720-TI-161 proceeding applicable if the methodology developed in 05-TI-283 is vacated?

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavit filed by Mr. Scott Alexander, SBC Wisconsin states that it fully complies with the requirements for this checklist.

According to Mr. Alexander, there are numerous interconnection agreements that contain all rates, terms and conditions for reciprocal compensation pursuant to FCC and PSCW rules. (Alexander Affidavit ¶ 113) Mr. Alexander also states that SBC Wisconsin is paying reciprocal compensation for ISP traffic under certain interconnection agreements. SBC Wisconsin asserts that its reciprocal compensation cost studies were filed and approved by the Commission in Docket 6720-TI-120. SBC Wisconsin's revised reciprocal compensation structure is based on the Commission's decision in Docket 05-TI-283 where the Commission adopted separate rate elements for tandem and end office switching as well as tandem transport and termination, reflecting the various costs for interconnection. While certain aspects of the 05-TI-283 order

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have been challenged in federal court, Mr. Alexander states that SBC Wisconsin has proposed rates in accordance with the bifurcated rate structure which are pending before the Commission in Docket No. 6720-TI-161. (*Id.* ¶ 116)

TDS

Through its brief and affidavit filed by Mr. Cox, TDS raises two issues. First, Mr. Cox argues that SBC Wisconsin "made a mockery of the 252(i) process by claiming that no reciprocal compensation appendix can be opted into, under any circumstances." (Cox Affidavit ¶ 26) In this regard, Mr. Cox asserts that SBC Wisconsin has misinterpreted the FCC's ISP Compensation Order by prohibiting the adoption of any reciprocal compensation provisions that pre-date the Order. (*Id.* ¶¶ 26-27) Second, Mr. Cox argues that SBC Wisconsin has created "unreasonable uncertainty for CLECs" because it has refused to state whether or when it will elect the FCC's Rate Cap proposal for ISP-bound traffic. (*Id.* ¶ 111)

SBC Wisconsin's Reply

In response, SBC Wisconsin argues that CLECs do not dispute that it has complied with the fundamental statutory requirements for this checklist item since SBC Wisconsin has entered into binding interconnection contracts and is paying reciprocal compensation to various CLECs under those agreements. The rates, terms and conditions under which SBC Wisconsin is paying CLECs for reciprocal compensation is based on Commission-approved cost studies.

In response to the first issue, Mr. Alexander argues that the "opt-in" provisions do not extend to reciprocal compensation used for ISP-bound traffic. Citing the FCC's ISP Compensation Order, Mr. Alexander states that section 252(i) adoption of reciprocal compensation for ISP traffic was cut-off as of the date the order was published in the Federal

Register. Mr. Alexander therefore concludes that CLECs may no longer exercise their rights to adopted ISP reciprocal compensation provisions. (Alexander Reply Affidavit ¶ 36) In any event, SBC Wisconsin states that the Commission has ordered, and it is paying reciprocal compensation for ISP-bound traffic for the duration of those contracts that have this provision. (SBC Wisconsin Reply Brief p. 84) Finally, SBC Wisconsin states that any carrier may 'opt-into' another contract with compensation provisions provided that contract became effective after the effective date of the FCC's ISP Compensation Order. (*Id.*)

In response to the second issue raised by TDS, SBC Wisconsin argues that nothing in the FCC's ISP Compensation Order requires SBC Wisconsin to declare at any point in time whether they will avail themselves of the FCC's rate cap plan. (Reply Brief p. 83) According to Mr. Alexander, "it is undisputed that the FCC gave the right to make the rate cap plan election (or to not make an election) to the ILEC. Further, there is no prescribed time period for an ILEC to make that determination." (Alexander Reply Aff ¶ 39) Finally, SBC Wisconsin states that there is no uncertainty because it has contractual provisions whereby a CLEC is notified 20 days in advance of any election by SBC Wisconsin. (*Id.* ¶ 40)

AT&T's December 5, 2002 Filing

According to AT&T, SBC Wisconsin cannot prohibit carriers from opting into reciprocal compensation provisions that were entered into after the FCC's preemption order was released. (AT&T Comments p. 56) AT&T argues that SBC Wisconsin's policy is anti-competitive because they deny CLECs the ability to adopt reciprocal compensation provisions after the effective date of the FCC ISP Order and then attempts to impose its 'bifurcated rate' proposal on CLECs. (*Id.* p. 56-57) AT&T also states that because its bifurcated rate proposal has been

vacated by the Wisconsin court, SBC Wisconsin cannot rely upon bifurcated reciprocal compensation rates as support for its 271 application. (*Id.* ¶ 58)

TDS' December 5, 2002 Filing

According to TDS, the FCC's ISP Order only addressed ISP-bound traffic and therefore "CLECs have the right to opt-into reciprocal compensation provisions in interconnection agreements with SBC for non-ISP traffic." (TDS Comments p. 33) TDS asserts that SBC Wisconsin is "deliberately misreading" the FCC ISP Order in such a way as to effectively eliminate TDS' rights under section 252(i) to adopt any reciprocal compensation provisions, not just those related to ISP traffic. (*Id.*). According to TDS, SBC Wisconsin's policy has the effect of requiring CLECs to either accept SBC Wisconsin's "boilerplate reciprocal compensation appendix" or arbitrate to obtain different terms. (*Id.* ¶ 35) Finally, TDS states that SBC Wisconsin has included the same bifurcated rate structure for reciprocal compensation in its new interconnection contracts that was vacated by the District Court. (*Id.* 38) According to TDS, "SBC/Ameritech's [SBC's] continued insistence on bifurcated reciprocal compensation rates renders it non-compliant" with this checklist item. (*Id.*)

SBC Wisconsin's December 5, 2002 Filing

SBC Wisconsin asserts that it offers reciprocal compensation with two different rate structures - unitary and bifurcated. According to SBC Wisconsin, both forms are contained in binding and effective interconnection agreements. (SBC Wisconsin Comments ¶ 178) Even though the federal district court has overturned the Commission's order that contained the bifurcated rate structure, SBC Wisconsin asserts that the district court's decision and the Commission's ongoing remand proceedings have no bearing on checklist compliance. (*Id.* ¶179)

According to SBC Wisconsin the FCC has previously held, "that the pendency of ratemaking proceedings does not affect checklist compliance." (*Id.*)

AT&T's December 15, 2002 Filing

AT&T states that the FCC did not eliminate the section 252(i) "pick and choose" rights after the ISP Decision was released. Therefore, "Ameritech's [SBC's] repeated refusal to allow CLECs to opt into reciprocal compensation arrangements governing both ISP calling *and local traffic* remains a failure to comply with Checklist Item 13." (AT&T Reply Comments p. 18, emphasis in the original)

In addition, AT&T states that, "Ameritech's [SBC's] theory that a vacated [05-TI-283] decision somehow has some continuing legal validity (or its more bizarre assertion that Judge Crabb's order only is 'procedural') should therefore be rejected." (*Id.* p. 19)

SBC Wisconsin's December 15, 2002 Filing

According to SBC Wisconsin, the issue raised by CLECs regarding opting into post ISP Compensation Order contracts is hypothetical, not ripe and falls outside the scope of a section 271 proceeding. SBC Wisconsin asserts that there are some limits regarding a carrier's ability to adopt reciprocal compensation provisions but states that, "There is no evidence that any carrier is seeking to opt into any particular reciprocal compensation arrangement today, or that any carrier is being denied entry due to the opt-in restrictions." (SBC Wisconsin Reply Comments p. 35) In support of this position, SBC Wisconsin states that both AT&T and TDS have interconnection agreements that were entered into after the ISP Compensation Order.

SBC Wisconsin also states that it continues to offer reciprocal compensation using the bifurcated rate structure to carriers. According to SBC Wisconsin, the district court decision

vacating the Commission's order was on procedural grounds and not on the merits of the rate structure itself. In addition, while SBC Wisconsin offers the bifurcated rate structure to carriers, they are free to negotiate or arbitrate for a different structure before the Commission. (*Id.* p. 37)

5. Commission Recommendation

The Commission recognizes that SBC Wisconsin has binding interconnection agreements in place with multiple forms of reciprocal compensation. Carriers are free to choose one of these contracts, negotiate a different form of reciprocal compensation or seek arbitration before the Commission.

The arguments offered by TDS and AT&T are hypothetical since both carriers have effective contracts with reciprocal compensation provisions. These two reciprocal compensation contracts alone could satisfy this checklist item. However, if SBC Wisconsin denies a CLEC its right to opt-into a contract made effective since the ISP order, the CLEC should bring this immediately to the attention of the Commission for resolution.

Subject to review with regard to the outcome of decisions in Phase II of this proceeding, SBC Wisconsin has shown compliance with this checklist item.

Disputed Issues

- After the FCC's ISP Order, to what extent do CLECs have the right to opt-into reciprocal compensation provisions in interconnection arrangements with AIT?

This issue is not relevant for purposes of a 271 approval decision. While hypothetical harms have been raised, no carrier has reported any actual problems in obtaining a contract with reciprocal compensation provisions. Any problems should be brought to the Commission for dispute resolution.

- Is SBC Wisconsin required to state whether or not it elects the reciprocal compensation rate cap described in the FCC's ISP Reciprocal Compensation Order before it gains its 271 approval?

No. The Commission agrees that the FCC left this decision with the ILEC and if, or when, the ILEC decides to adopt caps, notice is provided to CLECs.

- Are reciprocal compensation provisions in existing interconnection agreements, which may or may not rely on the methodology established prior to the Commission's decision in 05-TI-283, sufficient for 271 compliance given the Federal District Court Decision vacating the PSCW's decision in 05-TI-283?

Yes, as discussed above, SBC Wisconsin has approved interconnection agreements with various forms of binding reciprocal compensation provisions. This is sufficient for 271 purposes.

- Are AIT's bifurcated reciprocal compensation rates developed in the 6720-TI-161 proceeding applicable if the methodology developed in 05-TI-283 is vacated? Phase II issue.

On December 17, 2002, the Commission withdrew its prior order in Docket 05-TI-283 and vacated the reciprocal compensation provisions in the Final Order in Docket 6720-TI-161. Therefore it is appropriate to defer discussion of this issue is deferred to Phase II of this proceeding. However, in the interim any carrier may choose to voluntarily enter into an agreement that contains the bifurcated rate structure.

Checklist Item 14 – Resale

1. Statutory Requirement

47 U.S.C § 271(c)(2)(B)(xiv) of the Act requires the applicant to provide “Telecommunications services ... for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”

47 U.S.C § 251(c)(4) details the ILEC obligation for resale and states that the ILEC has “the duty (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State Commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”

47 U.S.C. § 252(d)(3) contains the statutory provisions related to pricing of resale services. Specifically, “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”

2. FCC Discussion Regarding Compliance

The FCC has concluded that resale restrictions are presumed to be unreasonable unless the ILEC demonstrates to a state commission that the restriction is reasonable and nondiscriminatory. In addition, the RBOC must demonstrate that it provides nondiscriminatory access to its OSS for resale products, including telecommunications services offered by a BOC’s advanced services affiliate. (VA, App C, ¶ 67)

3. Disputed Issue

- Has SBC Wisconsin complied with its resale obligations under Telecommunications Act of 1996 and the *ASCENT* decision with respect to DSL transport?

4. Position of the Parties

SBC Wisconsin

Through its brief and affidavit filed by Mr. Scott Alexander, SBC Wisconsin states that it fully complies with the requirements for this checklist item using both interconnection agreements and tariffs. According to Mr. Alexander, all retail services are available for resale and CLECs may resell these services to the same customer groups and in the same manner as SBC Wisconsin retail. For promotional offerings, Mr. Alexander states that it offers wholesale discounts to CLECs for 90 days. For retail services offered to a limited group of customers (e.g., grandfathered services), Mr. Alexander states that it offers these services for resale to the same group of customers. Customer-specific contracts are also available to the similarly-situated customers “without triggering termination liability charges or transfer fees to the end user.” (Alexander Aff. ¶¶ 127-131) According to SBC Wisconsin, all rates, terms and conditions for resale services were approved by the Commission in Docket No. 6720-TI-120 and have been incorporated into interconnection agreements and tariffs. (Alexander Aff. ¶ 132)

SBC Wisconsin’s advanced services affiliate, AADS, developed an interconnection agreement in response to the U.S. Court of Appeals for the D.C. Circuit *ASCENT* decision. The *ASCENT* decision found that advanced services affiliates are not exempt from the ILEC’s 251(c) resale obligations and therefore must make its advanced services available to CLECs at a wholesale discount. As a result, AADS makes Frame Relay and ATM Cell Relay services available to CLECs at wholesale prices. (Habeeb Aff. ¶ 22)

SBC Wisconsin argues there are some limits on the *ASCENT* decision. First, DSL Transport Service is not available for resale at a wholesale discount because this service is not a

telecommunications service sold to end user customers but rather to data CLECs. According to SBC Wisconsin, “The FCC has held that wholesale DSL transport service ‘is a wholesale service offering ... Because that offering is not a telecommunications service sold at retail, [the BOC] is not required to offer it at a resale discount pursuant to section 251(c)(4)’.” (SBC Wisconsin Reply Brief p. 86, citing the AR and MO 271 order). Therefore, SBC Wisconsin concludes that while DSL Transport Service is available for resale, it is not available at a wholesale discount.

Second, SBC Wisconsin asserts that ISP services are not available for resale since these services are considered information services and not telecommunications services subject to § 251 obligations. SBC Wisconsin again states that, “Here, too, the FCC has held that section § 271 does not require that the bundled Internet access service (which is an information service, not a telecommunications service) or the underlying wholesale DSL transport be made available for resale.” (SBC Wisconsin Reply Brief p. 86)

According to SBC Wisconsin, the Commission has approved two interconnection contracts between AADS and CLECs. Any CLEC may avail themselves to one of these contracts or negotiate its own.

AT&T December 5, 2002 Comments

AT&T asserts that, “The record in this proceeding has not been developed to the point where an informed decision can be made on whether SBC Wisconsin has satisfied its resale obligations.” (AT&T Comments p. 61) AT&T provided information from SBC’s 271 application in California. According to AT&T, the California Commission concluded that Pacific Bell had not complied with this checklist item “because it was improperly attempting to evade its obligations to resell DSL transport services by spreading its DSL operations across two

affiliates, in violation of the D.C. Circuit's decision in *ASCENT* (AT&T Comments p. 61)

AT&T recommends that the Commission take steps to ensure that SBC Wisconsin is not evading its resale obligations relative to DSL transport services.

SBC Wisconsin's December 15, 2002 Filing

In response to AT&T's suggestion that the record on this issue is incomplete, SBC Wisconsin states that it has explained its DSL Transport service and how it complies with previous 271 orders. (SBC Wisconsin Reply Comments p. 38) SBC Wisconsin also states that AT&T, "does not specify what additional facts or 'investigation' are needed." (SBC Wisconsin Reply Comments p. 38)

5. Commission Recommendation

Based on the current record and subject to the outcome of Phase II, the Commission concludes that SBC Wisconsin has complied with this checklist item.

SBC Wisconsin has made its services available for resale subject to federal and state requirements. In addition, AADS has complied and made its telecommunications services available for resale. The Commission believes that both demonstrate compliance with this checklist item.

More importantly, the FCC has approved similar 271 applications suggesting that SBC Wisconsin's policies are not inconsistent with the checklist.

Disputed Issue

- Has SBC Wisconsin complied with its resale obligations under TA96 and the ASCENT decision with respect to DSL transport?

For the reasons discussed above, the Commission believes that SBC Wisconsin has complied with its resale obligations under the Telecommunications Act of 1996 and the *ASCENT* decision with respect to DSL transport.

Section 271(D)(3)(C) – Public Interest Standard

1. Statutory Requirement

47 U.S.C. § 271(D)(3)(c) states that the FCC shall not approve a 271 application “unless it finds that the requested authorization is consistent with the public interest, convenience, and necessity.”

2. FCC Discussion

The FCC has concluded that demonstration of checklist compliance is a strong indication that approval of the application is in the public interest. However, because this standard is separate and apart from the 14-point checklist, the FCC conducts an independent public interest evaluation. According to the FCC, it “views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.” Factors that the FCC considers relevant to a public interest inquiry include reviewing “local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest...” and sufficient assurances that the market will remain open to competition after 271 approval. (VA, App. C, ¶ 71)

3. Disputed Issues

- Is SBC Wisconsin’s entry in the long distance market in the public interest? (e.g., levels of competition, service quality, compliance record, impact of premature entry).

- Separate Subsidiary – Does the public interest standard require SBC Wisconsin to establish a separate subsidiary for wholesale services?
- Remedy Plan – All remedy issues are deferred to Phase II.
- Special Access – As part of the public interest standard, should SBC Wisconsin be required to establish performance measures and remedies for special access?
- Win-backs – Are there any Wisconsin-specific problems related to win-back efforts or other anticompetitive conduct by SBC Wisconsin?
- Rate Freeze – Does the PSCW have the authority to require SBC Wisconsin to freeze its UNE or wholesale rates as a precondition for 271 approval?
- If so, should SBC be required to freeze these rates for a set period of time?
- Appeals – Does the PSCW have the authority to require SBC Wisconsin to withdraw its appeals of the Commission’s decisions in the 160 and 161 dockets as a precondition for 271 approval?
- If so, should SBC Wisconsin be required to drop its appeals as a pre-condition for 271 approval?
- Tariffs – Does the PSCW have the authority to require SBC Wisconsin to tariff all its wholesale product offerings?
- If so, does the public interest require such tariffing?
- What impact do SBC Wisconsin’s September 10th Comments, Petition to Reopen the Record, or, in the Alternative, Complaint Regarding Its Loop Conditioning Rates in 6720-TI-161 and UNE Compliance Comments have on this proceeding? Will be addressed in Phase II.

4. Position of the Parties

SBC Wisconsin

Through its brief and the affidavit filed by Mr. James D. Ehr, SBC Wisconsin states that it has comprehensive performance reporting and monitoring procedures to prevent backsliding after 271 approval has been granted. According to Mr. Ehr, “The FCC has found that performance measures and remedies provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items.” (Ehr Aff. ¶ 12) According to SBC Wisconsin, the Commission approved a “comprehensive regime” of performance measures covering a wide range of wholesale services that were agreed to by SBC Wisconsin and the CLECs. (SBC Wisconsin Brief, p. 80) According to Mr. Ehr, there are 150 performance measures, “many of which are divided into reporting categories for different product and service

types within each checklist item, and for different geographic locations within Wisconsin.” (*Id.*

¶ 44) Mr. Ehr also provides an analysis that purports to demonstrate how SBC Wisconsin’s performance measurement plan relates to each pertinent checklist item. (*Id.* ¶¶ 52-257)

SBC Wisconsin also states that the Commission issued an order regarding a remedy plan that SBC Wisconsin has complied with pending judicial review. (*Id.* p. 80-81) While the Court has stayed the payments pending further judicial review, SBC Wisconsin continues to offer CLECs its “Texas remedy plan” that was approved by the FCC in other 271 proceedings. (*Id.* p. 81) SBC Wisconsin asserts that its proposed plan provides for two-tiers of remedy payments – one to CLECs (for customer-affecting measures) and one to the State of Wisconsin (for competition-affecting measures). According to SBC Wisconsin, its performance and remedy plan fully complies with the five characteristics outlined by the FCC:

1. Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
 2. Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
 3. A reasonable structure that is designed to detect and sanction poor performance when it occurs;
 4. A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal and;
 5. Reasonable assurances that the reported data is accurate.
- (*Id.* p. 82-84)

Z-Tel

Through the affidavit filed by Mr. Walters, Z-Tel argues that SBC Wisconsin’s 271 application is not in the public interest because of SBC Wisconsin’s “win-back” program and its remedy plan. According to Mr. Walters, SBC Wisconsin’s program to win-back customers creates an anticompetitive advantage because Z-Tel is unable to conduct its own win-back program due to SBC Wisconsin’s inability to accurately provide line loss notices. Z-Tel filed a

complaint in Illinois and the Illinois Commission issued an order enjoining SBC Illinois from conducting its win-back program for 17 days. (Walters Aff. ¶ 39-40)

Mr. Walters also identifies three concerns with SBC Wisconsin's proposed remedy plan. First, the Commission should look at what is measured, not how many measures there are. Second, the Commission should understand that SBC Wisconsin scores its own performance. Finally, competing carriers like Z-Tel have no way of verifying if SBC Wisconsin is accurately reporting its performance. (*Id.* ¶ 42)

Norlight

In its comments, Norlight argues that the public interest would not be served by granting SBC Wisconsin 271 approval because the local markets are not open to competition. Norlight also states that the local markets are dominated by the RBOCs and competing carriers are having severe financial difficulties. Norlight recommends, "a more critical consideration of OSS problems" since these "are costing CLECs millions in delays, disputes and missed market opportunities." (*Id.* p. 11) Norlight also recommends that "a new and more expansive view of SBC Wisconsin's role and impact on the marketplace as a whole" be conducted because "through its OSS, SBC Wisconsin can essentially control the timing and ability of its competitors to provide service." (*Id.* p. 12)

TDS Metrocom

TDS filed an affidavit by Mr. Cox who asserts that SBC Wisconsin's 271 application is not in the public interest because, "SBC/Ameritech [SBC] continue to fail to honor its previously made commitments." (Cox Aff. ¶ 113) According to Mr. Cox, as a result of the Ameritech

merger with SBC, “SBC/Ameritech agreed to provide a certain number of loops at a discount. Several years later, it still has not provided even one-half of that total.” (*Id.*, ¶ 114)

Mr. Cox’s affidavit also opposes SBC Wisconsin’s proposed Texas-based remedy plan, “because it does not discourage backsliding.” (Cox Aff. ¶ 47) According to Mr. Cox, this plan uses the “K table” as, “a loophole to get out of paying remedies for poor performance.” (*Id.* ¶ 51) Mr. Cox also asserts that SBC Wisconsin uses the parity argument to avoid discussing poor performance. According to Mr. Cox, SBC Wisconsin does not believe it provides poor service if quality is at parity with retail. (*Id.* ¶ 57-58) Mr. Cox also asserts that, “personnel from the various units within SBC/Ameritech, ... have the potential to change the performance measures, the accuracy of the results, or the remedy amounts paid based on day-to-day policy and practice changes that may be unilaterally implemented.” (*Id.* ¶ 62) Mr. Cox also states that, “when SBC/Ameritech makes a change in the OSS Change Management arena, the change may not always get to the performance measurement remedy management personnel in a timely manner. Another risk is the possibility of a performance measure getting changed at random without collaborative/commission approval. (*Id.* ¶ 64) Mr. Cox recommends that the remedy plan ordered by the Commission in the OSS proceeding be used for 271 purposes. (*Id.* ¶ 48)

Citizen’s Utility Board (CUB)

The CUB asserts that, “granting Ameritech’s Section 271 application is contrary to the public interest. For residential phone customers in local markets, the promise of competition remains unfulfilled ... they have suffered years of poor service while the company has achieved stellar earnings from its Wisconsin operations, a history that suggests that the local phone market remains monopoly dominated.” (CUB Comments, June 2, 2002, p. 1)

The CUB filed an affidavit by Mr. Mark N. Cooper who asserts that the Commission should “use New York as a reference point for evaluating the state of competition in Wisconsin.” (Cooper Affidavit ¶ 27) When making this comparison, Mr. Cooper concludes, “competition for residential customers in Wisconsin is paltry,” indicating that “barriers still prevent new entrants from getting into the market.” (*Id.* ¶ 29)

Mr. Cooper also asserts that due to SBC Wisconsin’s ongoing litigation, uncertainty exists in the market and competing carriers are unable to become established. Mr. Cooper specifically cites the recent decision that stayed the Commission’s remedy plan and concludes that this, “precludes the company from demonstrating that it presently has in place a remedy plan that will prevent backsliding, a showing that is significant under the FCC’s public interest review.” (*Id.* ¶ 46) Mr. Cooper also states that SBC Wisconsin appealed the same order in federal district court challenging the lawfulness of the Commission’s requirement that SBC Wisconsin combine UNEs, creating “further uncertainty for CLECs deciding whether to locate or expand in Wisconsin.” (*Id.* ¶ 47) Mr. Cooper also states that SBC Wisconsin’s appeal of the Commission’s decision in the UNE Cost Proceeding (Docket. 6720-TI-161) will cause uncertainty for CLECs regarding UNE pricing. (*Id.* ¶ 49)

Mr. Cooper asserts that, “Ameritech [SBC Wisconsin] has incorrectly and inappropriately tried to narrow the scope of the public interest review” by arguing that 271 entry will result in greater long distance competition while ignoring the effects of SBC Wisconsin’s control over the local market. (*Id.* ¶ 51-63) Mr. Cooper also asserts that SBC Wisconsin service quality should be considered part of the public interest review and states that “it should not be assumed that inferior service quality will affect both the incumbent and the new entrant equally. New entrants

have little name recognition in local service.” (*Id.* ¶ 69 and 74) According to Mr. Cooper, “Given this track record, simply adopting the Texas-style performance measures will not work in Wisconsin.” (*Id.* ¶ 75)

Mr. Cooper also asserts that, “Prematurely allowing Ameritech [SBC] into the in-region long distance market undermines the prospects for competition ... [because] ... incumbents can capture long distance customers without having to compete on price because barriers have not been removed.” (*Id.* ¶ 77)

According to CUB, the Commission should recommend to the FCC that SBC Wisconsin’s 271 application be denied. (CUB Comments, June 2, 2002, p. 5)

AT&T

AT&T filed an affidavit by Ms. Karen W. Moore who asserts that, “the Performance Measure Test by KPMG reveals numerous and potentially fatal flaws in data gathering, retention, analysis, reporting, and fixing errors (‘restating’ in KPMG-jargon); thus, Ameritech’s [SBC’s] self reported data is so grossly inaccurate that it cannot reasonably be relied upon to determine whether nondiscriminatory service has been provided to CLECs.” (Moore Affidavit ¶ 19) Ms. Moore also asserts that SBC Wisconsin does not cooperate with CLECs in modifying its performance measures in response to changes in SBC Wisconsin’s provisioning of wholesale services and states that, “SBC/Ameritech is taking the position that it must ‘consent’ to performance measurement changes, even where a state utility commission orders the performance measurement changes.” (*Id.* ¶ 26, footnote omitted) Ms. Moore also recommends that the Commission reject Ameritech Wisconsin’s proposal to use the Texas remedy plan.

According to Ms. Moore, “There is no need to ‘adopt’ a new remedy plan for Wisconsin – particularly one already rejected by the Commission.” (*Id.* ¶ 57)

AT&T also filed an affidavit by Mr. Joseph Gillan who asserts that, “Deteriorating conditions in the competitive telecommunications industry – coupled with the incumbent LECs’ unrelenting attacks on their obligations to open their networks – call for a fundamental reexamination of whether granting additional 271 applications is in the public interest without, ... establishing clear conditions that would prevent Ameritech [SBC] Wisconsin from reducing any wholesale obligation in the future.” (Gillan Affidavit ¶ 5) According to Mr. Gillan, the Commission should consider SBC’s corporate behavior because SBC is, “working to eliminate the checklist at the *same time* that it claims that its compliance with the checklist should be rewarded with interLATA authority.” (*Id.* ¶ 6, emphasis in the original) According to Mr. Gillan, “SBC is unwavering in its dedication to UNE eradication.... Moreover, the Company is seeking a federal preemption of any State-imposed obligation.” (*Id.* ¶ 26) Mr. Gillan also asserts that there is a growing disparity between CLECs and ILECs because ILECs have chosen consolidation over competition and CLECs have had serious financial pressures. (*Id.* ¶ 31-38)

Mr. Gillan recommends that as a condition to obtaining 271 relief, the Commission order SBC Wisconsin not to withdraw any network element or other wholesale obligation without seeking the Commission’s approval and obtain SBC Wisconsin’s agreement that the Commission has the authority to require additional unbundling. (*Id.* ¶ 8) Mr. Gillan also recommends that the Commission order structural separation as a way of reducing SBC Wisconsin’s market dominance. According to Mr. Gillan, “the goal of a structural approach is to fundamentally change Ameritech’s [SBC’s] incentives so that its wholesale operation proactively

seeks to offer the most efficient provisioning system, while its retail operation designs products and sets prices that accurately reflect the rates it is charged for UNE access.” (*Id.* ¶ 44, emphasis in the original) Mr. Gillan states that SBC Wisconsin should be split into two entities – a network company that, “would manage the existing network, offering carriers access to its components (and combinations) as unbundled network elements” and a retail company that, “would compete like all other CLECs – gaining access to the existing network by leasing its components (and combinations) as well.” (*Id.* ¶ 45) Mr. Gillan believes that this organization, “would manage its affairs to maximize its consolidated return.” (*Id.* ¶ 49)

Time Warner Communications (TWC)

TWC filed affidavits by Ms. Pamela Sherwood from Indiana and Ohio. According to TWC, in Indiana, SBC is “benefiting from the poor quality of service provided to CLECs by targeting their promotions to only CLEC customers.” (TWC Comments, July 2, 2002, p. 2) Ms. Sherwood recommended that the Indiana Commission, “order Ameritech [SBC] to cease and desist its Winback program and promotional pricing until its wholesale quality of service problems are eliminated; to evaluate whether the Winback promotions and marketing practices are in compliance with Indiana law, federal law and Commission orders; and to establish an investigation or a workshop...to revise the terms and conditions under which Ameritech [SBC] can offer promotional pricing CSOs and engage in Winback programs if permissible.” (*Id.* p. 3) Finally, TWC believes that SBC Wisconsin’s “proposed remedy plan is inadequate and should not be accepted by this Commission as meeting the Section 271 requirements.” (*Id.* p. 3-4)

TWC filed an affidavit by Mr. Tim Kagele from Ohio where TWC argued that performance measures and the remedy plan apply to SBC's special access services because they are functionally equivalent to UNEs. According to Mr. Kagele, "Ameritech [SBC] is allowed to wiggle out of any mandatory obligation to report special access performance to the PUCO, FCC or to CLECs nor would SBC/Ameritech be subject to pay penalties for their poor performance." (Kagele Ohio Aff. ¶ 15)

WCOM

Ms. Joan Campion filed an affidavit on behalf of WCOM addressing the public interest issue. Ms. Campion asserts that SBC Wisconsin has appealed virtually every Commission order applicable to 271 approval in Wisconsin. (Campion Affidavit ¶ 17-18) Ms. Campion therefore recommends that SBC Wisconsin specify, "exactly which FCC and Wisconsin Commission orders it has appealed and what its intentions are in the event it is successful in its attacks on those orders. It may be that Ameritech [SBC] is willing to withdraw its outstanding appeals if it truly wants to demonstrate the irreversible steps to opening markets that the orders represent." (*Id.* ¶ 21) Ms. Campion further recommends that the Commission, "require Ameritech [SBC] to drop, at a minimum, its pending appeals of the OSS and UNE orders as a condition of receiving a favorable review of its Section 271 application." (*Id.* ¶ 22)

SBC Wisconsin's Response

According to SBC Wisconsin, the FCC, and not this Commission is entrusted in making the public interest determination. In addition, SBC Wisconsin argues that CLEC recommendations are simply an attempt to expand the 271 checklist, which is contrary to prior 271 orders. (SBC

Wisconsin Reply Brief, p. 87) However, SBC Wisconsin offered the following response to individual CLEC requests.

- Z-Tel's request for modification to the line loss performance measure – SBC Wisconsin states that this is not the time or the place to propose and consider modifications to specific performance measures. (*Id.*, p. 88)
- AT&T's request to use the Commission-ordered remedy plan – SBC Wisconsin states that, "Given the Court's decision reversing that plan, the Commission should reject AT&T's proposal and either find that Ameritech [SBC] Wisconsin's current offer is more than sufficient to satisfy section 271 pending a final outcome of judicial proceedings, or at a minimum defer consideration of remedy plan issues until they can be considered in light of the related performance results in Phase II." (*Id.* p. 89)
- TWC request for special access UNEs – SBC Wisconsin states that the FCC has concluded that special access issues are not part of any checklist compliance. (*Id.* p. 90)
- Z-Tel's request for restrictions on "win-back" programs and TWC's comments from Indiana – SBC Wisconsin states that examples of problems with SBC's win-back program are from other states and these parties did not provide any Wisconsin-specific examples. (*Id.* p. 91)
- WCOM's request for a five-year rate freeze or cap – SBC Wisconsin states that caps or a rate freeze are not appropriate because "costs inevitably change and evolve over time as new data is gathered and model are updated..." SBC Wisconsin further states that any proposed change in rates would be subject to CLEC comment. (*Id.* p. 92)
- AT&T's separate subsidiary proposal – Citing the New Jersey 271 order, SBC Wisconsin states "structural separation is not required by the FCC as a condition of section 271 approval." (*Id.* p. 93)

Mr. Ehr filed a reply affidavit stating that, in addition to the results of the BearingPoint test, "Phase II of this proceeding is the appropriate place to review the actual performance results based upon commercial experience, where applicable, for each of the checklist items." (Ehr Reply Affidavit ¶ 3-4) Mr. Ehr also disagrees with the recommendation offered by certain CLECs that the Commission use the plan ordered in the 160 docket and states that, "As that plan is currently under judicial review, it is inappropriate to offer it as Ameritech [SBC] Wisconsin's remedy plan for 271 purposes." (*Id.* ¶ 9)

TWC November 14, 2002 Filing

TWC argues that performance measures and remedies should apply to special access to the same extent as offered for UNEs. (Sherwood Aff. ¶ 36) According to TWC, SBC Wisconsin provides inferior service quality for special access customers thus harming TWC's business. (*Id.* ¶ 47) TWC also states that carriers that use special access are at a competitive disadvantage relative to CLECs that purchase UNEs because those carriers, "will have more performance data, metrics and benchmarks to measure whether they are receiving quality service, and if Ameritech's [SBC's] performance is below the standards, those CLECs will have remedies and penalties to compensate them for that poor service." (*Id.* ¶ 37) As a result, TWC recommends that, "SBC/Ameritech's performance ... [regarding special access] ... be investigated and reviewed prior to concluding that it satisfies the 271 checklist." (*Id.* ¶ 51)

Finally, TWC submits a new issue not included in the issues matrix. TWC recommends that the Commission, "develop a factual record from which it can determine whether Ameritech's [SBC's] plan for creating separate affiliate will comply with Section 272 and protect Wisconsin consumers." (*Id.* ¶ 52) According to TWC, a Minnesota ALJ was concerned with "improper communication between Qwest and its 271 affiliate, the policy of 'loaning' employees, lack of compensation when an experienced employee is transferred from the RBOC to the 272 affiliate, integration of management structure, lack of arms length transactions and the lack of sufficient detail to ensure compliance with limitations on joint marketing." (*Id.*, ¶ 53)

TDS's November 15, 2002 Filing

Mr. Cox filed a supplemental affidavit on behalf of TDS Metrocom asserting that SBC Wisconsin's application is not in the public interest "because of general problems of

unreasonable and unacceptable delay caused by SBC/Ameritech that pervades almost every aspect of TDS Metrocom's interactions with SBC/Ameritech ... [including] ... resolv[ing] issues with SBC/Ameritech ... [and] ... negotiating agreements or amendments." (Cox Sup. Aff. ¶ 44)

WCOM's November 15, 2002 Filing

According to WCOM, SBC has attempted to increase the rates for UNE-P "to exorbitant, competition-prohibitive levels" in the other four SBC Wisconsin states. According to WCOM, SBC is making this request while simultaneously seeking 271 approval and arguing that UNE-P is "just, reasonable, cost-based" rates. (Comments p. 7) WCOM states that the Michigan Commission dismissed the application with prejudice and SBC withdrew its application in Illinois.

WCOM also opposes SBC's recent public relations efforts where SBC ads state that 11,000 layoffs are a result of regulations and competition. According to WCOM, these ads "impugn competitors who are providing alternatives to ILEC services (alternatives that SBC needs to demonstrate exist in order to obtain 271 approval), are patently anticompetitive, and intend to damage public perception of competitors by portraying them as responsible for union job losses." (Comments p. 9) WCOM states that these negative ads are running while SBC has agreed to provide the City of Chicago \$3 million dollars to help construct a park that is experiencing cost overruns. (*Id.*) Also, WCOM asserts that SBC will cut jobs in states that have the lowest UNE-P rates, thus jeopardizing the quality of wholesale service.

CUB's November 15, 2002 Filing

The CUB filed a copy of the “SBC Investor Update in which SBC projects that it will reduce its nationwide work force by 20,000 this year ... and in which it reports that these employment cuts are proportionately greater in states ‘with lowest UNE-P.’” (CUB, p. 1, citing the SBC Investor Update) The CUB also provided a copy of a Milwaukee Journal Sentinel story in which SBC states that it will layoff many Wisconsin employees.

Joint McLeod, NTD and TDS December 5, 2002 Filing

According to these parties, SBC Wisconsin's 271 application is not in the public interest. These parties assert that TDS has provided numerous examples of “SBC/Ameritech technicians performing poorly and acting in an anti-competitive manner, including failing to make repairs and making solicitations and comments to TDS Metrocom customers which demonstrate that TDS Metrocom is being treated in a discriminatory manner.” (Comments p. 41) These parties also believe that, “SBC's executive level comments in various states, and anti-competitive advertising in newspapers and on television, imply that CLECs are not real telephone companies and their use of SBC's network at current rates is the cause for layoffs. This type of rhetoric from the highest levels of SBC encourages improper behavior from resources who are forced to provide service to both retail and wholesale customers.” (*Id.*, p. 43)

These parties also believe that ValueLink tariffs, “are another example of SBC/Ameritech's anti-competitive conduct, which slows the pace of competitive growth in Wisconsin.” (*Id.* p. 44) According to the parties, TDS filed a complaint regarding, “Ameritech [SBC] Wisconsin's excessive, unjust, unreasonable, unconscionable and anti-competitive

termination penalties.” These parties assert that until this complaint is resolved, SBC Wisconsin “cannot establish that it is in the public interest to grant it 271 approval.” (*Id.*)

These parties also believe that the Commission should reject SBC Wisconsin’s recommendation to ignore accounts of CLEC experiences from other states because, SBC routinely uses information from other states (including other Ameritech [SBC] states) when it supports its 271 application. Therefore, “SBC/Ameritech cannot now be heard to complain when CLECs introduce evidence of anti-competitive practices by SBC/Ameritech elsewhere in the region.” (*Id.* p. 46)

In addition, these parties believe that the Commission could preclude SBC Wisconsin from raising its rates “absent compelling evidence that costs have increased.” (*Id.* p. 47) Finally, these parties assert that, “It is not in the public interest to grant SBC/Ameritech 271 approval while it continues its appeal of the remedy plan” and further asserts that “compliance with Section 271 will remain uncertain until these appeals are resolved.” (*Id.* p. 47-48)

SBC Wisconsin’s December 5, 2002 Filing

According to SBC Wisconsin, the public interest inquiry is reserved for the FCC and “Congress did not authorize the Commission to conduct a public inquiry or advise the FCC on that issue.” (SBC Wisconsin Comments, ¶ 227-228) SBC Wisconsin further asserts that, “Allegations that some other action or the imposition of some new requirement would also be consistent with the public interest are thus legally irrelevant.” (*Id.* ¶ 229)

Regarding AT&T’s recommendation for structural separation, SBC Wisconsin states that this recommendation has been “soundly rejected” by the FCC in the New Jersey 271 order. (*Id.* ¶ 233) SBC Wisconsin also states that, “Implementation of structural separation likely would be

enormously complex, would impose significant inefficiencies on SBC Wisconsin, would degrade the quality of both retail and wholesale services, would be confusing to customers, and could lead to higher wholesale prices.” (*Id.* ¶ 232)

Regarding TWC’s request for performance measures and remedy payments for special access, SBC Wisconsin states that the FCC has rejected this request in multiple 271 orders. (*Id.* ¶ 238) According to SBC Wisconsin, the public interest inquiry is to determine compliance with federal requirements and may not be used to expand the checklist. (*Id.* ¶ 239-240)

Regarding CLEC complaints on SBC’s Winback program, SBC Wisconsin states that, “no party presented evidence showing any impropriety in SBC Wisconsin’s Winback activities.” (*Id.* 241)

Regarding WCOM’s recommendation for a five-year rate freeze, SBC Wisconsin asserts that, “A rate freeze would unlawfully interfere with SBC Wisconsin’s right to propose, and the Commission’s duty to establish, cost-based rates.” (*Id.* ¶ 243)

Regarding the recommendation that SBC Wisconsin withdraw its pending appeals, SBC Wisconsin states that, “There is no legal basis to require, as a condition of section 271 approval, that Ameritech [SBC] Wisconsin waive its legal rights (both statutory and constitutional) to obtain judicial review of the Commission’s decisions.” (*Id.* ¶ 247) SBC Wisconsin also states that, “for appeals where Ameritech [SBC] Wisconsin alleges that its constitutional rights have been violated, the Commission cannot agree that the vindication of rights granted by the United States Constitution is contrary to the public interest.” (*Id.* ¶ 248)

Regarding the recommendation that SBC Wisconsin tariff all wholesale product offerings, SBC Wisconsin states that such a requirement is contrary to the Act, which

“establishes a clear preference for negotiated or arbitrated agreements.” (*Id.* ¶ 249) SBC Wisconsin also states that the decision in the federal District Court of the Western District of Wisconsin (*Wisconsin Bell, Inc. v. Bie*, No. 01-C-0690-C, Opinion and Order) supports this position.

WCOM’s December 5, 2002 Filing

In response to SBC Wisconsin’s statements regarding no Winback problems in Wisconsin, WCOM asserts that “Ameritech’s [SBC’s] sales practices are nationwide” and therefore relevant for Wisconsin. (WCOM Comments, p. 36) WCOM also asserts that other states (e.g., IL, OH, and IN) have investigated or are currently investigating the anti-competitive nature of SBC’s Winback program.

WCOM also cites proceedings in other states (e.g., IL, IN, MI, and OH) regarding SBC’s efforts to raise UNE prices, “while simultaneously pursuing Section 271 proceedings.” (*Id.* p. 38) WCOM also asserts that, “SBC/Ameritech has begun waging a multi-pronged attack against TELRIC-based pricing for UNEs and the continued availability for the UNE-Platform, seeking to eliminate both.” (*Id.* p. 39) According to WCOM, a five year freeze on UNE rates, “will provide certainty for CLECs preparing business plans and contribute to a local market that is fully and irreversibly open to competition.” (*Id.*)

WCOM recommends that SBC Wisconsin be required to terminate its appeals of Commission orders in order to meet the public interest requirement. (*Id.* p. 41) According to WCOM, “permitting Ameritech [SBC] Wisconsin to base its Section 271 application on existing orders and requirements while Ameritech [SBC] Wisconsin simultaneously seeks to overturn those orders on appeal is contrary to the public interest because it eliminates certainty that

CLECs need to develop business plans based upon those orders, and leads to a reduction in the amount of local competition.” (*Id.* p. 42)

WCOM asserts that SBC Wisconsin’s application must include a review of its compliance with both federal and state laws. According to WCOM, “Ameritech [SBC] has engaged in a pattern of disobeying commission orders regionwide and Ameritech [SBC] Wisconsin’s unapologetic failure to acknowledge such transgressions in my mind simply highlights Ameritech’s [SBC’s] intent to continue its demonstrated pattern of defying state laws and regulations.” (Campion Reply Aff. ¶ 17)

WCOM added three new issues to the public interest inquiry. First, WCOM asserts that due to the recent decision by the Circuit Court of Milwaukee County, there is, “no effective remedy plan in Wisconsin.” WCOM asserts that the remedy plan adopted by both TDS and TWC is “insufficient” to meet FCC requirements, asserting that these amendments are “anticompetitive” and contain “discriminatory flaws.” WCOM recommends that their comments filed in Dockets 05-TI- 712 and 05-TI-714 be considered as part of the Commission’s public interest analysis. (*Id.* ¶ 24) WCOM recommends that the Commission require SBC Wisconsin to adopt the remedy plan developed in the OSS docket as a precondition for 271 approval. (*Id.* ¶ 26)

Second, WCOM recommends that the Commission not approve the application while SBC Wisconsin attacks the UNE-P and UNE rates. WCOM asserts that SBC Wisconsin is using CLEC entry via the UNE-P to demonstrate checklist compliance while at the same time attempting to eliminate the UNE-P. According to WCOM, “SBC has launched a campaign against the continued availability of the UNE Platform, as well as against the UNE pricing

decisions that have come out of the states, and the Ameritech region in particular, through legal, legislative, political and public relations means, including frequent FCC and state commission filings, meetings with commissioners and legislators, advertisements in newspapers and on television, and the promotion of union activities antithetical to competition.” (WCOM Comments, p. 45) According to WCOM, “SBC has actually run [a] hypocritical print advertisement ... depicting its competitors as ‘cry babies’ who are pillaging SBC in the competitive local market.” (Campion Reply Aff. ¶ 8)

Third, WCOM recommends that the Commission not approve the application while SBC Wisconsin announces layoffs that may affect wholesale service quality. According to WCOM, “SBC has announced plans to layoff 11,000 employees, ostensibly due to financial pressures caused by the continued availability of the UNE-P and the decision of regulators regarding TELRIC pricing. SBC has informed its investors that these layoffs will be targeted to the states where UNE rates are lowest.” (WCOM Comments p. 46-47) WCOM asserts that, “This means that wholesale service quality will be at greater risk (due to lower numbers of SBC/Ameritech personnel to serve wholesale customers) in states where local competition is more likely to develop due to UNE-P rates that make competition viable.” (Campion Reply Aff. ¶ 10) WCOM also asserts that this will cause union employees to favor SBC Wisconsin’s retail customers and detrimentally impacting CLEC service quality. (*Id.*)

Citizens Utility Board (CUB)

According to CUB, “This Commission should adopt factual findings for the FCC concerning Ameritech [SBC]-Wisconsin’s legal intransigence with respect to the company’s challenges of the PSC’s authority to remedy anti-competitive behavior.” (CUB Comments, p. 2)

The CUB also recommends that the Commission, as a condition for 271 approval, require “Ameritech [SBC] Wisconsin to waive any legal challenges of the PSC’s authority to impose wholesale service standards and to impose remedies for violations of those standards.” (*Id.* p. 3)

The CUB also disagrees with SBC Wisconsin’s methods for determining the level of competition in Wisconsin and recommends that the Commission use the FCC’s data since it, “is more reliable.” (*Id.* p. 5)

Finally, CUB asserts that, “Ameritech [SBC]-Wisconsin’s failure to apply for a certificate of authority [under Wis. Stat. Section 196.50(7)] precludes the Commission from allowing the company to enter Wisconsin’s long distance market.” (*Id.*, p. 6-7) The CUB also asserts that the 1996 does not preempt section 196.50(7). (*Id.*, pgs. 7-9)

AT&T’s December 5, 2002 Filing

AT&T asserts that SBC Wisconsin’s entry into the long distance market is not in the public interest because the current level of facilities-based competition is not sufficient to provide a check on SBC Wisconsin’s “anticompetitive tendencies.” (AT&T Comments, p. 63)

AT&T recommends structural separation be imposed on SBC Wisconsin as a pre-condition for 271 approval. However, AT&T states that, “if the Commission is not prepared at this point to order the relief, it should at the very least take this concept under advisement and make clear to Ameritech [SBC] that the option is a viable next step in the process of creating local competition.” (*Id.* p. 65)

AT&T also asserts that SBC Wisconsin is using Privacy Manager as a Winback tool because SBC Wisconsin offers this product free to end users while denying it to CLECs. (*Id.* p. 78)

AT&T also supports the recommendation that SBC Wisconsin freeze its UNE rates for three to five years in order to create “rate certainty.” (*Id.* p. 78 and 85) According to AT&T, “Ameritech [SBC] Wisconsin must be able to demonstrate the existence of finalized TELRIC-compliant UNE prices prior to Section 271 approval because of their direct and undeniable linkage to competition.” (*Id.* p. 79) AT&T also cites to SBC’s efforts in other states to raise UNE rates and concludes that these efforts will come to Wisconsin. (*Id.* p. 87) AT&T also states that the Commission should take notice of the fact that SBC is “intent on using every possible approach to extinguish the UNE-P business opportunity ... [including] ... reducing [its] force by 11,000 positions and making ‘cuts proportionately greater in states with lowest UNE-P’.” (*Id.* p. 84, citing the SBC’s Oct. 24, 2002 Investor Update)

Regarding the request that SBC Wisconsin withdraw its appeals of Commission decisions, AT&T states that, “no party has advocated that Ameritech [SBC] Wisconsin be required to withdraw the subject appeals as a pre-condition of 271 approval. Rather, the fact that the 160 and 161 dockets are on appeal and subject to potential change injects an unacceptable level of uncertainty into the competitive mix on a prospective basis.” (*Id.* p. 89) According to AT&T, “CLECs need a threshold degree of certainty and predictability regarding the prices, terms and conditions at which they can purchase UNEs from Ameritech [SBC] in formulating their local service offerings. CLECs also need to know that the processes and systems Ameritech [SBC] uses to provide wholesale services to CLECs provide UNEs and interconnection to CLECs in a nondiscriminatory fashion and allow CLECs to provide the same quality of service that Ameritech [SBC] provides to itself and its customers.” (*Id.* p. 90)

Finally, AT&T recommends that the Commission require SBC Wisconsin to tariff its wholesale offerings as being in the public interest. (*Id.* p. 94) According to AT&T, “the tariff allows the CLEC to enter the local market much more quickly and efficiently, without having to wait almost a year to negotiate and/or arbitrate its own interconnection agreement.” (*Id.*)

Time Warner Communications’ (TWC) December 5, 2002 Filing

TWC recommends that the Commission require SBC Wisconsin, “to tailor its intrastate special access tariff to CLECs, and include performance measures and remedies that are equivalent to those set forth for unbundling loops and dedicated transport when Ameritech [SBC] fails to provide CLECs with intrastate service that comports with basic quality of service standards.” (TWC Comments, p. 21) TWC also responds to SBC Wisconsin’s affiant regarding its win-back program. Specifically, TWC states that it has not filed a complaint because complaints are “timely and expensive.” (Sherwood Reply Aff. ¶ 9) TWC asserts that, “It is clear that Ameritech’s [SBC’s] poor wholesale quality of service to the CLEC makes Ameritech’s [SBC] winback promotions targeted to CLEC customers unreasonably effective.” (*Id.* ¶ 13) Citing examples from other states, TWC concludes that SBC Wisconsin would rather maximize monopoly profits rather than provide adequate wholesale service. (*Id.* ¶ 21)

AT&T’s December 15, 2002 Filing

According to AT&T, SBC Wisconsin’s concern that a separate subsidiary will be confusing to customers is not “consistent with the economics and incentives created by a structural separation... [because] ... Structural separation is consistent with good public policy and would ensure product and system quality and efficiency at optimal rates.” (AT&T Reply

Comments, p. 20) AT&T asserts that if correctly implemented, there “should be no customer confusion.”

AT&T also disagrees with SBC Wisconsin that a five-year cap on UNE rates would unlawfully interfere with SBC Wisconsin’s rights to change rates to reflect a change in costs. According to AT&T, “SBC’s and Ameritech’s public statements meticulously avoid claiming that their costs have increased. Rather, they imply that state regulators, one after another, have simply gotten the rates wrong.” (*Id.* emphasis in the original) AT&T also states that since the Commission established TELRIC rates earlier this year, SBC Wisconsin currently has cost-based rates.

AT&T also states that unless SBC Wisconsin agrees to withdraw its appeals of the Commission’s 6720-TI-160 and 6720-TI-161 orders, “the Commission’s decisions in those dockets are ‘in limbo’ ... [and] ... Until these dockets are finally resolved and nonappealable, this Commission cannot endorse SBC’s application ... as consistent with the public interest, convenience and necessity.” (*Id.* p. 25-26)

Finally, AT&T states that the, “legal environment surrounding [the tariffing of wholesale services] is in a state of flux. The public interest aspect of the tariffing requirement, however, is very clear.” (*Id.* p. 26) According to AT&T, “If the Commission is concerned about its ability to require SBC to file tariffs, it must, at a minimum, ensure that SBC voluntarily agrees to file such tariffs as a precondition to this Commission’s endorsement of SBC’s 271 application.” (*Id.* p. 27)

WCOM's December 15, 2002 Filing

According to WCOM, SBC Wisconsin's Winback efforts are not in the public interest and recommends that the Commission require SBC Wisconsin to respond to discovery and cross-examination regarding its Winback practices. (WCOM Reply Comments, p. 32)

WCOM asserts that SBC has employed "bait and switch tactics" by "filing applications to increase UNE rates by enormous orders of magnitude shortly after filing draft 271 applications." (*Id.*) As a result, WCOM recommends that the Commission not make a positive recommendation until SBC Wisconsin agrees to freeze UNE rates.

Finally, WCOM requests that its comments submitted as part of the Track A analysis be considered as part of the public interest analysis as well. (*Id.* p. 35)

Time Warner Communication's December 15, 2002 Filing

In response to SBC Wisconsin's statement that the public interest should not include special access issues, TWC asserts that, "other states have required the adoption of performance measures for special access services as part of their 271 public interest reviews...include[ing] Colorado, Utah and Washington." (TWC Reply Comments, pg. 3, footnotes omitted)

SBC Wisconsin's December 15, 2002 Filing

According to SBC Wisconsin, CLEC recommendations, "consist largely of attempts to expand the requirements of specific checklist items or to rehash theories that the FCC has expressly rejected in its section 271 orders – exactly the type of analysis that the FCC considers improper." (SBC Wisconsin Reply Comments, p. 41)

In response to McLeod/NDT/TDS comments regarding ValueLink, SBC Wisconsin states that, "no end users have signed onto ValueLink since 1999, and there is only one end user

still under contract in the program, so the assertion that this service is preventing end users from moving among carriers is absurd on its face.” (*Id.*)

In response to AT&T’s recommendation for structural separation, SBC Wisconsin states that, ‘AT&T advanced the same ... proposal in Docket No. 6720-TI-166, and the Commission declined to adopt or consider it.’ (*Id.* p. 42)

Citing various 271 orders, SBC Wisconsin states that the FCC has consistently, “refused to consider the provision of special access services as part of its public interest requirement.” (*Id.*)

SBC Wisconsin asserts that CLECs have not identified any Wisconsin-specific problems with the Company’s Winback program. According to SBC Wisconsin, “CLEC allegations about problems in other states are as inaccurate as they are irrelevant.” (*Id.* p. 43)

SBC Wisconsin states that if revised UNE rates are proposed, CLECs have certainty because those rates, “will not go into effect unless this Commission, after investigation and notice to interested parties, determines that those rates (and supporting cost studies) comply with federal pricing rules.” (*Id.*) SBC Wisconsin also asserts that the Act and FCC rules require rates to be cost-based and do not require that rates be capped or fixed for any period of time. (*Id.* p. 44)

In response to CLEC recommendations that it drop its appeals, SBC Wisconsin states that, “There is simply no legitimate basis for requiring an applicant such as Ameritech [SBC] Wisconsin to check its legal and constitutional rights at the door to pursue section 271 relief.” (*Id.* p. 45) SBC Wisconsin also states that it won its appeal of the Commission’s remedy plan order and that, “section 271 does not require parties to carry out unlawful orders.” (*Id.* p. 46)

SBC Wisconsin also states that the joint filing by McLeod/NTD/TDS asserting that SBC Wisconsin opposes any remedy plan is “unfounded” since TDS and SBC Wisconsin recently negotiated a remedy plan in Wisconsin. (*Id.* p 46)

In response to WCOM’s assertions regarding its UNE-P and TELRIC advocacy, SBC Wisconsin states that, “The rights to speak and to petition the government are hardly contrary to the public interest. Advocacy in and of itself does not change the rules on local competition; those rules change when the government has heard both sides and decides that change is in the public interest. WCOM’s proposal to punish Ameritech [SBC] Wisconsin for exercising its constitutional rights should be rejected out of hand.” (*Id.* p. 45)

Finally, in response to CUB’s assertion that SBC Wisconsin has not complied with Wis. Stat. § 196.50(7), SBC Wisconsin states that the, “argument is out of place.” According to SBC Wisconsin, “this is not a certification proceeding under state law, but a proceeding to advise the FCC on federal law.” (*Id.* p. 46) SBC Wisconsin also states that the requirements in 196.50(7) mirror requirements under federal law, “and to the extent CUB contends there is a difference, that would raise serious questions of federal pre-emption that should be the subject of separate briefing.” (*Id.* p. 46)

5. Commission Recommendation

Interested parties in this docket have raised several issues under the public interest standard as set forth in 47 U.S.C. § 271(D)(3)(c). For the most part, these issues are related to OSS and UNE pricing, which have been deferred to Phase II of this proceeding. Some issues are also under judicial review on appeal, such as the statewide remedy plan and tariffing obligations. Therefore, the Commission defers any discussion regarding the public interest inquiry and the

Docket 6720-TI-170

associated disputed issues pending completion of Phase II of this proceeding. The Commission believes that these issues are best addressed after reviewing the entire record in this proceeding. However, there are a few issues that can be addressed at this time.

CLECs in this proceeding have proposed a 5-year UNE rate freeze as a condition of 271 approval. A UNE rate freeze, as proposed by CLECs, is contrary to 47 U.S.C §§ 251 & 252, and Wis. Stats. §§ 196.03(6), 196.04, and 196.219, which authorizes the Commission to resolve disputes and to set reasonable rates, term and condition for UNEs.

Interested parties in this docket have argued for structural separations of SBC's wholesale operations. The FCC has not required structural separations as a prerequisite for 271 approval. The Commission declined to investigate structural separations for SBC Wisconsin in docket 6720-TI-166. Nevertheless, the Commission retains its jurisdiction under Wis. Stat. § 196.204(3) to order structural separations for wholesale services. Moreover, the Commission retains its jurisdiction under both federal and state law to certify, with or without conditions, SBC Wisconsin, or its appropriate affiliate, to provide in-region long distance service.

Time Warner Communications argues that SBC Wisconsin fails the public interest test due to its poor performance in provisioning special access services, specifically because there are no performance measures and remedies. While this issue is significant enough to pursue in a separate investigation under the Commission's state law authority, it is not necessary for 271 compliance. The Commission may investigate the provisioning of intrastate special access services in docket 6720-TI-166 or in a separate docket.

Determination

1. SBC Wisconsin is hereby directed to file a compliance plan within 20 business days following issuance of this determination. The compliance plan is to address non-compliant issues discussed above. SBC Wisconsin shall notify the Commission within 5 business days following issuance of this determination if it waives any procedural objections and accepts the directive to make a compliance filing as a binding order. If SBC Wisconsin does object to the compliance filing, then the compliance aspect of this docket will be noticed for hearing as part of Phase II.

2. This determination is effective upon mailing.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

LLD:JJR:NAL:xxx:g:\order\pending\6720-TI-170 Final.doc

APPENDIX A

This proceeding is not a contested case under Wis. Stat. ch. 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, the persons listed below participated.

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APPENDIX B

Abbreviation For Parties and Commenters

Abbreviation	Legal Name
AT&T	AT&T Communications of Wisconsin, L.P.
CUB	Citizens' Utility Board
McLeod	McLeodUSA Telecommunications Services, Inc.
Norlight	Norlight Telecommunications, Inc.
NTD	Northern Telephone Data
SBC	Southwestern Bell Corporation
SBC Wisconsin	Wisconsin Bell, Inc., d/b/a SBC Wisconsin
TCG	TCG Milwaukee
TDS	TDS Metrocom
TWC	Time Warner Telecom
WCOM	WorldCom, Inc.
Z-Tel	Z-Tel Communications, Inc.

Acronyms Used

Acronym	Meaning
AADS	Ameritech Advanced Data Services
AAS	Ameritech Advertising Services, Inc.
ACIS	Ameritech Customer Information System
ADSL	Asymmetric Digital Subscriber Line
AIN	Advanced Intelligent Network
ALJ	Administrative Law Judge
ATM	Asynchronous Transfer Mode
BFR	<i>Bona Fide</i> Request
BFR-OC	<i>Bona Fide</i> Request – Ordinarily Combined
CFA	Connecting Facility Arrangement
CHC	Coordinated Hot Cut
CLASS	Custom Local Area Signaling Services
CLEC	Competitive Local Exchange Company
CLEC	Competitive Local Exchange Carrier
CMP	Change Management Plan
CNAM	Calling Name database
COBO	Collocation Build-Out
CORBA	Common Object Request Broker Architecture
CPUC	California Public Utilities Commission
CSO	Customer Service Offering
CSR	Customer Service Record
DA	Directory Assistance

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DAL	Directory Assistance Listing [data base]
DAL	Digital Access Line
DMARC	Demarcation Point
DNAL	Dedicated Network Access Line
DS1, DS3	Digital Service level 1 or level 3
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Module
DSR	Directory Service [listing] Request
DTI	TDS's DSL loop qualification tool
EBTA	Electronic Bonding and Trouble Administration
ECS	Engineering Controlled Splice
EDI	Electronic Data Interface
EEL	Extended Enhanced Link
Enhanced LEX	Enhanced Local service request EXchange
FCC	Federal Communications Commission
FCC	Federal Communications Commission
FDT	Frame Due Time
FG D	Feature Group D
FMOD	Facilities Modification
FOC	Firm Order Confirmation
GUI	Graphical User Interface
HDSL	High-bit-rate Digital Subscriber Line
HFPL	High Frequency Portion of the Loop
ICC	Illinois Commerce Commission
IDF	Intermediate Distribution Frame
IDLC	Integrated Digital Loop Carrier
ILEC	Incumbent Local Exchange Carrier
ISDN	Integrated Services Digital Network
ISP	Internet Service Provider
JTE	Joint Testing Environment
LIDB	Line Identification Database
LNP	Local Number Portability
LOC	Local Service Operations
LSC	Local Service Center
LSOG	Local Service Ordering Guide
LSR	Line Sharing Request
LSR	Local Service Request
MCPSC	Mechanized Customer Protection Support Center
MDF	Main Distribution Frame
MET	Market Entry Trial
NGDLC	Next Generation Digital Loop Carrier
NID	Network Interface Device

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NPAC	Number Portability Administrative Center
NTF	No Trouble found
OC3, OC12, OC48	Optical Carrier [level] 3, 12, and 48
OS	Operator Service
OSMOP	Operator Services Marketing Order Processor
OSS	Operational Support System
PAD	Power Spectral Density
PBX	Private Branch Exchange
POI	Point of Interface
POR	Plan of Record
POT bay	Point of Termination bay
PUCO	Public Utilities Commission of Ohio
RACF	Remote Access Call Forwarding
RBOC	Regional Bell Operating Company
ROW	Right of Way
RSU	Remote Switching Unit
SCE	Service Creation Environment
SCP	Service Control Point
SME	Subject Matter Expert
SNET DG	Southern New England Telecommunications Corp. – Diversified Group
SOC	Service Order Completion
SPOI	Single Point of Interface
SS7	Signaling System 7
SSP	Signal Switching Point
STP / STPs	Signal Transfer Point / Signal transfer Points
TELRIC	Total Element Long-Run Incremental Cost
TIC	Trouble Isolation (or Identification) Charge
TIRKS	Trunks Integrated Record Keeping System
UDLC	Universal Digital Subscriber Line
ULS	Unbundled Local Switching
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element - Platform
UNE-P	Unbundled Network Element-Platform
WP	White Page

APPENDIX B
Abbreviated Citations for Dockets and Cases

SHORT FORM CITATION USED IN ORDER	FULL CITATION
FCC Orders Under Section 271	
<u>Arkansas & Missouri 271 Order</u>	<u>In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Arkansas and Missouri</u> , 16 F.C.C. Rcd. 20719 (2001)
<u>BellSouth 5-State 271 Order</u>	<u>In re Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</u> , WC Docket No. 02-150, 2002 WL 31084940 (rel. Sept. 18, 2002)
<u>Connecticut 271 Order</u>	<u>Application of Verizon New York Inc. et. al. for Authorization to Provide In-Region, InterLATA Services in Connecticut</u> , 16 F.C.C. Rcd. 14147 (2001)
<u>Georgia & Louisiana 271 Order</u>	<u>In re Joint Application by Bellsouth Corp. et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</u> , 17 F.C.C. Rcd. 9018 (2002)
<u>Kansas & Oklahoma 271 Order</u>	<u>In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , 16 F.C.C. Rcd. 6237 (2001)
<u>Maine 271 Order</u>	<u>In re Application by Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Maine</u> , 17 F.C.C. Rcd. 11659 (2002)
<u>Massachusetts 271 Order</u>	<u>In re Application of Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Massachusetts</u> , 16 F.C.C. Rcd. 8988 (2001)
<u>Michigan 271 Order</u>	<u>Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan</u> , 12 F.C.C. Rcd. 20543 (1997)
<u>New Jersey 271 Order</u>	<u>In re Application by Verizon New Jersey Inc., et al. for Authorization to Provide In-Region, InterLATA Services in New Jersey</u> , 17 F.C.C. Rcd. 12275 (2002)
<u>New York 271 Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State</u>

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SHORT FORM CITATION USED IN ORDER	FULL CITATION
	<i>of New York</i> , 15 F.C.C. Rcd. 75 (1999)
FCC Orders Under Section 271 (continued)	
<u>New Hampshire & Delaware 271 Order</u>	<i>In re Application by Verizon New England, Inc., et al. for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware</i> , WC Docket No. 02-157, 2002 WL 31130421 (rel. Sept. 25, 2002)
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<u>Virginia 271 Order</u> <u>VA, App. C</u>	<i>In re Application by Verizon Virginia Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Virginia</i> , WC Docket No. 02-214, 2002 WL 31426657 (rel. Oct. 30, 2002)
<u>Rhode Island 271 Order</u>	<i>In re Application of Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Rhode Island</i> , 17 F.C.C. Rcd. 3300 (2002)
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<u>ASCENT</u>	<i>Association of Communications Enterprises v. Federal Communications Commission</i> , 235 F.3d, 662, 666 (D.C. Cir., 2001)
<u>Advanced Services Order</u>	First Report and Order and Further Notice of Proposed Rulemaking, <i>Deployment of Wireline Services Offering Advanced Telecommunications Capability</i> , 14 F.C.C. Rcd. 4761 (1999)

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SHORT FORM CITATION USED IN ORDER	FULL CITATION
<u>Advanced Services Reconsideration Order</u>	Order On Reconsideration And Second Further Notice Of Proposed Rulemaking In CC Docket No. 98-147 And Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, <u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , 15 F.C.C. Rcd. 17806 (2000)
<u>Advanced Services Remand Order</u>	Fourth Report and Order, <u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , 16 F.C.C. Rcd. 15435 (2001)
<u>Collocation Waiver Order</u>	Memorandum Opinion and Order, <u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , 16 F.C.C. Rcd. 3748 (2000)
<u>First Report and Order</u>	First Report and Order, <u>In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , 11 F.C.C. Rcd. 15499 (1996)
<u>ISP Compensation Order</u>	Order On Remand And Report And Order, <u>In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket No. 96-98 and <u>In re Intercarrier Compensation for ISP-Bound Traffic</u> , CC Docket No. 99-68, 16 F.C.C. Rcd. 9151 (2001)
<u>Line Sharing Order</u>	<u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Third Report and Order In CC Docket No. 98-147 and <u>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , Fourth Report and Order In CC Docket No. 96-98, 14 F.C.C. Rcd. 20912 (1999)
<u>Line Sharing Reconsideration Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Third Report and Order on Reconsideration in CC Docket No. 98-147 and <u>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 F.C.C. Rcd. 2101 (2001)
Other FCC Orders (continued)	
<u>Local Competition Reconsideration Order</u>	Order On Reconsideration, <u>In re Implementation of the Local Competition Provisions in the Telecommunications</u>

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SHORT FORM CITATION USED IN ORDER	FULL CITATION
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<u>Project Pronto Order</u>	Second Memorandum Opinion and Order, <i>In re Ameritech Corp., Transferor and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules</i> , 15 F.C.C. Rcd. 17521 (2000)
<u>Second Report and Order</u>	Second Report and Order and Memorandum Opinion and Order, <i>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 11 F.C.C. Rcd. 19392 (1996)
<u>Supplemental Order</u>	Supplemental Order, <i>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 15 F.C.C. Rcd. 1760 (1999)
<u>Supplemental Order Clarification</u>	Supplemental Order Clarification, <i>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 15 F.C.C. Rcd. 9587 (2000)
<u>Third Report and Order</u>	Third Report and Order, <i>In re Telephone Number Portability</i> , 13 F.C.C. Rcd. 11701 (rel. May 12, 1998)
<u>UNE Remand Order</u>	Third Report and Order and Fourth Further Notice of Proposed Rulemaking, <i>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 15 F.C.C. Rcd. 3696 (1999)
<i>Wisconsin Bell, Inc., vs. Bie, et.al.</i>	<i>Wisconsin Bell, Inc., vs. Bie, et.al.</i> , No. 01-C-0690-C, Sept, 26, 2002
<u>Virginia Arbitration Order</u>	Memorandum Opinion and Order, <i>In re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration</i> , CC Docket Nos. 00-218 et al., 2002 WL 1576912 (rel. July 17, 2002).

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